APPENDIX J

WILLIAM C. GALVIN
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The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1020

MAY 12 2003

Vice Chairman
Committee on Insurance
House Committee on Ways and Means
Health Care Committee
Medicaid Committee

May 8, 2003

Ms. Jane Wallis Gumble
Chair
Chapter 40B Housing Task Force
Department of Housing and Community Development
One Congress Street, 10th Floor
Boston, MA 02114

Dear Chair Gumble;

Please accept this letter as my written testimony for the May 12th, 2003 meeting held by the Chapter 40B Housing Task Force. This legislative session I have filed a comprehensive piece of legislation, House Bill 1293, which amends Chapter 40B. The bill was filed after soliciting ideas and feedback from my local elected officials and residents of the communities which I represent.

One of the proposals contained in House Bill 1293 is relative to the Housing Appeals Committee (HAC), which is on the agenda for the Task Force meeting. The HAC currently grants developers "waivers" on the grounds that the denial of the application would render the project uneconomical. The types of allowable waivers and the word uneconomical should be explicitly defined. In addition, the burden of proof should be on the applicant to show that the denial of the application is uneconomical. Also, the burden should force the applicant to prove that if the waiver is granted, the project will not adversely affect the community's resources or health and well-being of the town's residents.

From 1990-2002, just 16% of HAC decisions were in favor of the municipality, 84% were in favor of the developer. If the HAC is able to overturn local decisions with such frequency, the waiver process and the word "uneconomical" should be more clearly defined. This would allow municipalities to understand the appeals process and outcome of the process with greater ease.

Thank you for allowing me the opportunity to provide my thoughts and ideas on this critical issue of affordable housing. Please feel free to contact me with any questions or concerns.

Sincerely

Bill Galvin

William C. Galvin
State Representative

The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1020

LOUIS L. KAFKA
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Committees on
Ways & Means
Post Audit & Oversight
Steering & Policy

House Special Committee
on Veteran's Affairs
Vice Chair

April 25, 2003

Ms. Kristen Olsen
DHCD
One Congress Street
Boston, Massachusetts 02114

RE: Chapter 40B Task Force Agenda – Meeting Monday, April 28, 2004

Dear Ms. Olsen:

On April 14, several of my constituents from the Town of Stoughton appeared before you to present their case regarding initiatives for 40B reform as it applies to a particular case in the community. The proposed site of development has caused quite a controversy in town due to the sensitive area in which it is planned.

As I'm sure this able group informed you, the piece of land involved has a history with the town, dating back to the 70's when the Army Corps of Engineers was requested to perform reconnaissance scope evaluations. The property was considered a wetland, even then. Their report included an observation that, "…construction of houses is active in the flood plain along Daly Drive. These homes would most likely be subject to flooding in future storms. Not only will such flooding affect new homes directly, but also will affect flood levels in adjacent areas…" It should be noted that construction of these homes was completed, and several of them do indeed have flooding during moderate to heavy rainfall, when the water table rises. The Corps' directly recommended that, "…the town should initiate action to provide ordinances that would prohibit future development of flood plain lands, not only Dorchester Brook, but also along other streams within the community. The enforcement of zoning ordinances for regulating construction in the flood plain would allow residents of Stoughton to purchase federally subsidized flood insurance." You have seen the pictures of the neighborhood discussed at this meeting, post construction. The Corps was correct and additional development will only exacerbate this problem.

Please do not mistake the opposition of this 40B as 'NIMBY'. This is a diverse neighborhood, which houses a group home for mentally retarded adults.

The problem with this development points to a problem inherent with 40b development. The ability of developers to circumvent town ordinances without real site appraisal is an argument for reform. The process of developer to town to banker becomes one of profit over the greater good. Building on a site that has never seen a 21E assessment, puts the entire neighborhood at risk for a plethora of problems including contamination from voc's, metals, and chemicals from prior usage. The same can be said of water problems, which hurts not only current residents, but those who buy these homes in good faith. Once all papers are passed, where do they go to seek relief?

The opportunity to reform 40B is tremendous. It is without question that we need affordable housing for all of Massachusetts' residents. Why can't we create a process that encourages development of appropriate and adequate land for housing, while leaving at-risk properties alone?

I urge your honorable committee to include ALL current 40B applications in your reform package, as you have discussed in the 'Technical Improvements' portion of your agenda. Our communities deserve the same attention to these projects as they would to any future projects.

Your task is difficult, but meaningful. Thank you for your efforts on our behalf.

With best personal regards, I remain

Sincerely,

Louis L.Kafka
State Representative

TOWN of BROOKLINE
Massachusetts

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April 22, 2003

Jane Wallis Gumble
40B Task Force Chair
Director, DHCD
One Congress Street, 10th Floor
Boston, MA 02114

Dear Ms. Gumble,

We are pleased that Governor Romney has convened a Task Force to consider possible improvements to Chapter 40B, the Commonwealth's "anti-snob zoning" statute.

For over thirty years, the Town of Brookline has expended considerable effort and resources to create and preserve a substantial supply of affordable housing - both owner-occupied and rental - for the betterment of the community. Yet, our affordable housing inventory as counted under Chapter 40B, at about 8 percent, falls short of the 10 percent goal established for all Massachusetts cities and towns under Chapter 40B. Furthermore, after considerable study, the Town has concluded that because of the high cost and high density character of our community and a lack of adequate state and federal housing subsidies, the remaining 600+ affordable units needed to progress from 8 to 10 percent cannot be achieved quickly, despite our best efforts.

Brookline has adopted, and willingly continues to support, the 10 percent goal locally, including explicitly stating this goal in our current Comprehensive Plan. Furthermore, Brookline continues to use all available tools to preserve and increase our affordable housing inventory, including the commitment of resources from the Town's operating budget and - since 1987 - a strong inclusionary zoning bylaw. We are fully supportive of the Commonwealth's efforts to encourage and recognize local communities' adoption of affordable housing plans that will chart a course toward achieving the 10 percent goal, and are moving toward adopting such a plan.

That said, we would submit that the current Chapter 40B regulation, which offers individual communities temporary protection against overrides of local zoning ordinances by the Housing Appeals Committee—currently based upon an arbitrary rate of progress toward the 10 percent goal--might be considerably improved upon in order to meet its stated objectives.

In this regard, we would offer the following core proposal for the Committee's consideration:

Change the basis for measuring the rate of progress toward the 10 percent Chapter 40B goal from .75% of the community's total housing inventory over a one-year period to 10% of the community's affordable housing deficit over a two-year period.

The current measure that will allow a city or town a one-year moratorium on processing new comprehensive permits is based upon an annual rate of affordable housing production equal to 0.75 percent of the community's total housing stock. For example, if a town's total housing stock were 10,000 units (the denominator), the required rate of annual progress would be 10,000 x 0.75, or 75 new affordable housing units per year (the numerator).

We suggest that a more appropriate denominator for this type of measure, rather than a community's total housing inventory, should be the total number of units that constitutes the remaining deficit between the community's current 40B inventory and the 10 percent goal. For example, if the above community with a total 10,000 unit housing stock currently has 200 affordable units under Chapter 40B, the remaining deficit to be closed (our recommended denominator) would be 800 units (10,000 x .10) – 200 = 800.

In other words, a city or town would submit an affordable housing plan that would project its rate of progress from its currently credited inventory (e.g., 200 units) to its Chapter 40B goal (e.g., 1,000 units).

This alternative method not only builds directly from the more relevant base (the gap), but it introduces an important fairness element that is absent under the current fixed standard. That element would be a positive recognition for communities that have already made good progress toward the 10 percent goal and, conversely, it would establish a proportionately higher annual threshold for a one year moratorium for communities that have done little to produce affordable housing on their own.

We suggest the following specific standard to receive temporary relief: ***That the required rate of progress be a 10 percent reduction of a community's affordable housing deficit during any given two year period.*** To continue with the example introduced above, the community with 10,000 total housing units and an 800 unit affordable housing deficit would need to produce 80 net new eligible affordable housing units over the previous 24-month period to secure temporary Chapter 40B relief.

In addition to the above core recommendation, we would offer the following three additional suggestions for revision and improvement to the current Chapter 40B requirements.

1. **For counting affordable housing inventory under Chapter 40B, allow high cost municipalities to adopt, with DHCD approval, a definition of moderate income up to 100% of median area income.**

   Because "low and moderate income" is not statutorily defined (and because authorizing legislation for other state initiatives such as the Affordable Housing Trust and the Community Preservation Act, has more inclusive income definitions), we believe this change might be possible through regulation. However, if DHCD is not prepared to recognize the needs of high cost communities in its overall administration of Chapter 40B, it could do so through the Local Initiative Program only. That is, DHCD could grant a community Chapter 40B credit for incomes up to 100 percent of median if the community determines that it is warranted by local need, specifically for those units which are produced on "local initiative", such as through local inclusionary zoning laws.

   Brookline has one of the largest per-unit affordability gaps in the state, as is well documented in a recent CHAPA study. Despite our history as a diverse community, our substantial area zoned for multifamily housing, and ongoing efforts to create and preserve affordable housing, we are becoming a town of "haves and have-nots" -- those who are able to pay full market rates, and those fortunate enough to have subsidized housing -- leaving an enormous gap. Not only does the Town believe this to be an unhealthy situation, housing staff at Town Hall receives many calls from residents who face displacement by rising rents, thereby disrupting their community ties and in some cases their children's education. Often, their incomes exceed the 80 percent cap under Chapter 40B. While we wish to use our inclusionary housing policy to assist such residents, our concerns about meeting the 10 percent threshold under Chapter 40B deter us from doing so.

2. **Count 100% of units in multi-family buildings that contain at least 25% affordable units, whether rental or condominiums, in communities with little vacant land, a significant proportion of units already rental and/or a significant portion of land already zoned for multifamily.**

   Brookline would appreciate additional affordable rental housing, and encourages developers to consider this alternative. However, with rare exception, neither the Town nor other affordable housing funding sources are sufficient to address the reality of Brookline's market, which provides a high differential in return to developers of market rate condominiums over rental housing. As a practical matter, the Town is in no position to cause developers to propose rental rather than owner-occupied housing.

3. **Elevate the consideration of site and building design 31.07 (3) (b) to take into account impact on adjacent sites, once a project reaches the Housing Appeals Committee level.**

   Because our Town is so built up, developers in Brookline who apply or who consider Chapter 40B tend to look to teardowns and/or small infill lots in already densely developed neighborhoods. In such cases, they are tempted to consider Chapter 40B as a license to design to the property line and/or at heights which directly impact the lives of neighbors on adjacent properties. Because Chapter 40B was developed as a tool for suburban and exurban areas, these adverse effects upon built-out communities may not have been anticipated.

We respectfully submit these suggestions in the spirit of making Chapter 40B more responsive to local conditions, while continuing to produce much-needed affordable housing statewide.

Thank you for your consideration. We would be pleased to discuss the above ideas further with the Committee and or DHCD staff.

Sincerely,

Roger Blood, Chair
Housing Advisory Board

Deborah Goldberg, Chair
Board of Selectmen

cc: Senator Cynthia Creem
Representative Frank Smizik
Representative Jeffrey Sanchez
Representative Michael Rush
Representative Brian Golden
Geoff Beckwith, Executive Director MMA
Aaron Gornstein, Citizens Housing and Planning Association

-----Original Message-----
From: Roger Blood [mailto:bloods@rcn.com]
Sent: Wednesday, May 21, 2003 2:51 PM
To: Gaertner, Anne MARIE (OCD)
Subject: 'Brookline Proposal'

To: Chapter 40B Committee Members & Staff:

From: Roger Blood, Chair, Brookline Housing Advisory Board

Date: May 21, 2003

Re: Brookline Proposal - Request for Further Consideration

The 'Brookline Proposal'--an alternative method for recognizing Planned Production--received favorable comment from Committee members prior to the May 20 meeting; but on May 20th it was quickly dismissed based upon a numerical illustration that was provided to Committee members. This illustration indicated--incorrectly we believe--that it would take 57 to 87 years for a city or town to reach the 10% threshold under our suggested method of measuring/approving Planned Production. The illustrative table presented assumes that, as a city or town would reduce its AH deficit, it could continuously return to DHCD with a revised/stretched out schedule and continue to receive 40B relief.

The Brookline Proposal includes no such assumption. It is, in fact, much simpler. We propose that a city or town be allowed to seek DHCD approval for ONE annualized schedule to eliminate its AH deficit. The illustration provided in our letter--closing the gap at a rate of 10% every two years (5% per year)--translates into a maximum of 20 years to reach 10%. This would be the same time period that a community starting with zero affordable units would require under the proposed 0.5%-of-total-housing-stock standard.

There would be several benefits for DHCD to have his alternative method for approving a Planned Production housing plan (possibly in addition to, rather than instead of, the single current standard based upon one's total housing stock):

1. It would provide a positive recognition and incentive for communities that have achieved significant progress toward the 10%. (Perhaps this option should be made available only to those communities that have already reached at least a 5% milestone.)

2. For built-up communities with a substantial existing housing stock, the 0.75% or 0.5%-of-total-stock standard simply does not offer a realistic basis for creating a feasible housing plan. After substantial time and investment, our Comprehensive Plan consultants have confirmed this fact here in Brookline. In his earlier remarks to the Committee, Mark Bobrowski cited statistics from a number of other built-up communities, indicating that Brookline is far from unique in this regard.

3. The more communities that are afforded a positive incentive to adopt and implement serious plans to eliminate their AH deficits, the fewer HAC appeals and court actions there will be. This appears to be a significant problem the Committee seeks to alleviate.

Some Committee members may object that providing this optional measure of Planned Production progress could allow some communities to produce less AH than would otherwise be required. We disagree. We believe the Brookline Proposal is just the type of 40B reform that the Committee was formed to identify, i.e., a way to sustain both pressure and incentives upon communities to produce AH, while affording them reasonable leeway to produce under feasible plans that take account of their own circumstances. The basic mandate remains unchanged. More communities signing on to what they can actually accomplish with available land and resources will reduce friction and resistance in the system and arguably will result in a higher, rather than a lower rate of AH production.

NOTE: The Brookline Proposal can easily be incorporated into the Working Draft (pp.12-15) and is quite compatible with other ideas that may be adopted from the May 20 meeting discussions (e.g., max. 3 yrs'

relief based upon a given year's actual production). The Planned Production narrative in the Working Draft dealing with the affordable housing plan would all apply. Only Paragraph 6, dealing with the recording of progress, would need to be expanded by several sentences to define this alternative measure of progress. We would be pleased to promptly assist with such wording, if requested.

We request that the Committee reconsider including the Brookline Proposal in its Draft Report, given that the time to achieve 10% cannot exceed 20 years, rather that the 57 to 87 year time frame indicated in the illustrative example that was distributed.

Thank you.

Roger Blood

Consistency and Equity

$ Count of Homeownership Units

During the April 28th Committee meeting there was concern expressed that there should be a count of homeownership units as applied to a towns overall count. Equally expressed was the need to focus the conversation, at all times, on the end result. That is, to provide affordable housing at a pace faster than has been provided to date. However, allowing 100% of the homeownerships to be also counted would double or even triple the pace toward the 10% thereby reaching an end goal potentially early without necessarily achieving the real goal. That of providing real affordable housing units. In effect, Towns would be able to say they reached the 10% but at the time they do they would have produced more than half less affordable units than they would have if homeownership were not in the count as is the case today. This is particularly true where there are more homeownership projects proposed than rental projects. It would be a travesty to rush toward a goal but never really having attained it.

Of equal concern expressed was that there should be some bonus relief to Towns for continuing to provide rental housing. History has long supported that concern and gave way to the count methodology used throughout the years.

A possible middle ground to be considered might be the utilization of a simple 3/2 method. In effect, projects that are rental would be able to count 3 times the number of affordable units within a development that received final approval. Projects that are homeownership would be able to count 2 times the number of affordable units within a development that received final approval.

Example:

Project Type	Sponsor	Units Applied For			Units Approved				Units Counted
		Total	Market	Affordable	Total	Market	Affordable		
Homeownership	Builder	160	120	40	120	90	30	(x2)	60
Rental	Town	48	24	24	48	24	24	(x3)	72
Rental	Builder	80	60	20	60	40	20	(x3)	60
Homeownership	Housing Authority	40	24	16	40	24	16	(x2)	32

A simple 3/2 method serves to create a middle ground addressing ease of use; allows a reasonable count within homeownership projects based upon real affordable units without sacrificing the end goal; allows incentive bonus for rental projects over homeownership projects and allows fairness to Towns in count at a faster rate without doubling or tripling the speed of the count. Note: There will be times where a rental projects final count exceeds the total number of units. That however is part of the incentive and is likely to only occur in non-profit sponsored smaller projects that contain higher than 33% affordability as in the Town example above. It not only allows incentive in count but also provides more incentive to produce a higher percentage of affordability within any project.

Respectfully Submitted: Jacques N. Morin, Bayberry Building Company, Inc. (Cape Cod) jmorin@bayberry.attbbs.com

Create Incentives to Approve Projects in a Timely Fashion

Coming to grips with the time in which projects engender is at the very core of the States ability to increase the pace of affordable housing. Time is not only at the forefront of the lagging pace of affordable housing but also sets a price tag by which developers approach projects and by which Towns and the State utilize money and staff to see projects through.

The following incentive should be considered:

For Towns who give final approval (decision) of a project within 120 days from when the application is first submitted that does not result in an appeal from the applicant within the 20 day prescribed time period shall be entitled to a unit count bonus of 10 percent of the entire total number of units approved. Bonus unit count shall be rounded to the nearest whole unit. I.E.- If project total is 75 units the allowable bonus shall be 8 units; If a project total is 54 units the allowable bonus shall be 5 units. This unit bonus count, when applicable, gets added to the overall affordable unit count for the particular approved project.

What will this accomplish?

- $ It will create more incentive to Towns to achieve unit count bonuses by attempting to negotiate a workable project to both the Town and the Developer in a timely fashion.
- $ Creates an environment where Towns would be more likely to approve workable projects than to outright deny them.
- $ Developers will be less likely to appeal a project if a reasonably negotiated project is approved saving both the Town and the Developer time and money.
- $ When you invite strong negotiations you are more likely to achieve an amicable outcome between Towns and Developers that serves the purpose of limiting impediments to housing while increasing the rate of production.
- $ The more projects negotiated at the local level will serve to lessen the caseload at the HAC level.
- $ A small but reasonable unit count bonus can serve as a win for the Town, a win for the developer, a win for HAC and a win for affordable housing on the whole.

Respectfully Submitted: Jacques N. Morin, Bayberry Building Company, Inc. (Cape Cod) jmorin@bayberry.attbbs.com

Limiting number of 40B projects and or units a community can review at any one time.

Communities differ in their ability to hear multiple 40B projects relying on volunteer Boards and staff input. When the State endorses an appreciable increase in the production of affordable housing it becomes more difficult to balance a Towns ability against its mandate to provide affordable housing to its population.

Conversely, Towns differ in size and consequently the total number of affordable unit production required by any given community is directly correlated to its size. Therefore, due consideration on limiting the number of applications a Town can have before it should not simply be a fixed number for all Towns regardless of size but conversely a rational number should be established based upon the size of the Town together with the percentage of affordable housing stock a particular Town already has all as evidenced by the last decennial census. This method directly speaks to the Towns overall requirement to provide affordable housing along with giving particular consideration to the size of the Town.

How Does It Work - A Town would first look at the most recent decennial census. From that, they would look at their total number of year round housing units and round it to the nearest 1,000 (but no less than 1,000 for any Town). That number would be divided by the Towns percent of affordable housing base noted in the census and then rounded to the nearest whole number. Plus 1 is added to that nearest whole number to determine the number of applications a community can have before it at any given time (exclusive of non-profit applications).

Example:

Community	Yr.Round. Units	Rounded To Nearest 1,000 (A)	% of Afford. Base (B)	Product of Division (A/B)	Rounded To Nearest Whole #	Rounded Whole Number, Plus 1 = #Applications
Abington	5,339	5	4.69	1.07	1	2
Chelmsford	12,981	13	3.71	3.50	4	5
Gloucester	12,997	13	6.38	2.04	2	3
Hopkinton	4,521	5	2.7	1.85	2	3
Medford	22,631	23	7.02	3.28	3	4
Norwell	3,299	3	2.94	1.02	1	2
Tewksbury	10,125	10	4.05	2.47	2	3

What are the Benefits?

$ It avoids an unfair disequilibrium among Towns. If Town A has 25,000 households but only a 3% affordability base against Town B who has 4,000 households with a 7% affordability base then it makes sense that each Town should not have the same number of applications before it. Brings into proportion the Towns size (and often ability to handle applications) and then contrasts it with the Towns progress (% of affordable base) to determine the number of applications should be before it. Towns A & B of equal size but where A has 4% affordability and B has 8% affordability should allow for A to be more progressive and B less progressive.

$ Creates incentives for Towns to increase their overall percentage of affordable households. The faster and to a higher percentage a Town increases its affordable base

the more of a breather a Town is allowed from the number of applications that can come before it.

Limiting Assumptions and (A Note of Caution)

1] Assumes that for total households that a minimum of 1,000 (rounded to 1) will be used.

2] Towns who have provided above the 10% mandate for their affordable base will continue to have the option of denying projects.

3] Applications submitted to the Zoning Board shall have the right to be heard in the order by which they were first clocked in with the Town Clerk. In the event a Town has the maximum number of permits pending before it the next application having a right to a hearing shall be the then most current clocked in application not currently being heard.

4] In the event a clocked in application is unable to be heard due to the Town having the maximum number of permits before it then the time imposed for hearings shall be tolled and said time shall not commence until such time the Zoning Board has notified the applicant in writing that the time period by which the applicant had clocked in begins. Such notice by the Board shall be sent to the next applicant in line within fourteen(14) days after the decision of any pending hearing the decision of which opens the process for a new application.

A Note of Caution - When issuing a new limit on the number of applications a Town can have before it at any one time it is quite conceivable, no matter what method used, that a Town can hold up projects simply by dragging it out whether by continually requesting new information, rescheduling hearings by lack of quorum or by simply litigating for a few years on appeal. It essentially can be a way of stalling projects on the horizon. It is essential therefore that any cap imposed on the number of applications be solely on "for profit" developments and not for "non-profit" entities. A developer has no control over how long a Town sponsored project will take. More importantly, a Town can simply take three or four of its smaller parcels, institute a 40B process of 4, 8 and 12 units on each of the parcels, drag out the process and keep in abeyance larger and perhaps unwanted "for profit" developments.

Lastly, it is equally important that once a decision by a Board is reached that it opens up the process for the next application regardless of appeal or further litigation. In that regard, the pace of affordable housing production will be allowed to continue towards the goal.

Respectfully Submitted: Jacques N. Morin, Bayberry Building Company, Inc. (Cape Cod) jmorin@bayberry.attbbs.com

AHBC
Affordable Housing Business Coalition

April 25, 2003

Ms. Jane Gumble
Department of Housing and Community Development
One Congress Street
Boston, MA

Dear Ms. Gumble and Members of the Chapter 40B Task Force:

The Affordable Housing Business Coalition consists of a wide range of residential development firms actively involved in producing housing through Chapter 40B. We wanted to offer some observations and suggestions to the Task Force as it considers the future of Chapter 40B and the best way to produce mixed-income housing in the Commonwealth.

As presentations to the Task Force have clearly shown, Massachusetts has not built enough housing during the last decade to keep up with the number of new households looking for a home. This has led to skyrocketing prices. Compared to other states, Massachusetts is near the very bottom in new production and at the top in home price increases. Lack of affordable housing is not just a problem for lower income families. Employers now list the high price of housing as one of their largest obstacles to their economic success. The result has become a disaster for our economy as more and more of the young people starting careers move to other parts of the country because of long commutes and unacceptably high home prices.

In recognition of this crisis, the Governor has established a goal of doubling residential building permits. This goal will be a significant challenge given our long tradition of "Home Rule" and the legendary difficulties of getting building permits in Massachusetts. The Commonwealth as a whole may recognize the need for more housing production, but individual communities expend huge amounts of energy trying to block most new housing proposed in their backyards. In this environment Chapter 40B has become a tool that is critical to what little housing is getting built in Massachusetts today—affordable and market rate. For example, fully 50% of all rental housing receiving building permits over the past 5 years in communities that have not met their 10% threshold received Comprehensive Permits under 40B.

It is also important to note that recent reforms in 40B procedures and a greater level of knowledge about Chapter 40B at the community level have laid the groundwork for a less controversial environment for reasonable residential development. As these reforms "sink in," it is likely that communities will learn how to manage their housing production in a better way. Therefore, we make the following suggestions to the Task Force:

1. Endorse Recent Regulatory Changes: The Task Force should endorse recent regulatory changes and give these changes an opportunity to be fully implemented and understood.

   Over the last two years, DHCD has implemented very significant changes to Chapter 40B through three rounds of new regulations. The collective result of these changes is to give communities much greater control over the housing that is built under Chapter 40B in their town.
   * Project size has been limited to 150 to 300 units, depending on the size of the town.

- Site Eligibility Letters must now be issued by a government agency designated by DHCD, eliminating bank-issued site letters had been the cause of much of the outcry from opposition board members and legislators.
- Communities can reject undesirable applications if they have made progress of at least three-quarters of a percent in the past year, according to the "planned progress" provisions of the regulations.
- Town master plans and housing plans are to be considered by the Housing Appeals Committee.
- The one-year cooling-off provisions of the regulations have deterred so-called "revenge filings".
- The types of units counted on the affordable inventory have been expanded.

Our recent experience suggests that the new regulations are indeed having a positive effect on the way comprehensive permits are considered and reviewed by zoning boards. Many communities have been encouraging favored proposals so that undesirable projects can be deterred. Communities are actively working with developers toward LIP proposals or "friendly" 40B proposals where they had previously opposed any such development. We believe these new regulations are having the desired effect of allowing localities to steer development away from locations deemed undesirable as along as they are making progress toward building affordable housing.

2. HAC Procedural Reform. Procedural changes and additional staffing to accelerate the HAC process should be a priority for the Department. With more than seventy cases pending, the Housing Appeals Committee decision-making process is very slow. Full hearings and decisions are sometimes taking two years or more. Many of the projects in queue will not survive the lengthy wait, and many more projects will be deterred because of the diminished value resulting from the long and costly appeal process. Accelerating the appeals process at the HAC would be the single most important action that could be taken to produce more affordable and market rate housing. We suggest that administrative staffing capacity be added to the HAC funded by increased HAC filing fees, and that reasonable time limits be instituted for the appeals process. If a project is a bad one, it should be rejected, but if it is going to be approved, let it be approved in a reasonable time frame to help deal with our state's housing crisis.

   We believe an accelerated appeal will improve the local zoning review process. If the HAC process is restored to a reasonable time frame, we think ZBAs and other parties will again give serious consideration of the review standards embodied in the 40B regulations.

   In addition to increased staff capacity, there are other measures that should be considered for making the HAC decision process more efficient. For example, a summary judgment procedure based on the local record could fairly settle many of the cases. An administrative "superceding order" process similar to that used by the DEP is another alternative. Some consideration should also be given to streamlining the cumbersome judicial process employed by abutters to appeal ZBA and HAC decisions. The Task Force need not determine specific changes, but we believe it should strongly affirm the need to greatly shorten the appeals process.

3. Suggestions for Incentives to Meet 40B Thresholds. The Task Force should recommend that achieving the 10 percent threshold be tied to access to critical state funding. For example:
   - Communities that have achieved 10 percent on the subsidized housing inventory should have first priority for the new school construction fund.
   - Adoption of a Planned Production program and recent progress in producing affordable housing should be a prerequisite for access to the DEP loan funds for water and sewer system expansion.
   - The Governor's proposal for a housing production local aid bonus should be targeted toward affordable housing and/or multifamily housing, rather than any housing production.

We hope these observations and suggestions are helpful in the Task Force's deliberations.

Sincerely,

AFFORDABLE HOUSING BUSINESS COALITION

AvalonBay Communities

Beacon Residential Properties

John M. Corcoran and Company

Delphic Associates, LLC

The Gatehouse Group LLC

JPI

Lincoln Property Company

Joseph R. Mullins, Inc.

National Development

Roseland Property Company, Inc.

Rising Tide Development LLC

Stockard Engler & Brigham

Trammell Crow Residential

The Affordable Housing Business Coalition (AHBC) is a group of businesses and not-for-profit organizations seeking to maintain and increase the supply of affordable and market rate housing in Massachusetts. Founded in February of 2001, AHBC is open to all businesses and organizations that are involved in the production of affordable and market-rate housing.

Dear Members of the 40B Task Force,

As a spokesperson for a Natick neighborhood, let me first commend the task force for the responsible and thorough approach you have demonstrated thus far with regard to the issue of affordable housing. Our neighborhood fully supports fair and reasonable affordable housing and believes this to be an achievable and laudable goal.

With that said, I would like to bring to your attention an ongoing situation whereby our neighborhood has had to endure threatening 40B rhetoric from nearby landowners. Last year, these landowners repeatedly warned the neighborhood of a hostile Chapter 40B development if we did not accept their proposed zoning bylaw change and now that their zoning proposal has failed, they seem intent on using Chapter 40B as a tool of retribution. We feel this type of abusive behavior, which is very stressful to the neighborhood, town officials and to the town at large is an important issue that needs to be addressed and mitigated.

Below are two examples which typify the ongoing situation described above. The first is an excerpt taken from the minutes of meeting involving a zoning committee that was established by town meeting to review the landowner's zoning request (I was appointed to that committee as the neighborhood representative). The second is an article that appeared in yesterday's Boston Globe.

I thank you in advance for your consideration.

Sincerely,

Gary Bohan
5 Rockland Terrace
Natick MA 01760

copies:
Representative David Linsky

Excerpts from the July 25, 2002 meeting of the Age-Qualified Village Zoning Advisory Committee (Note: Mr. Melchiorri is one of the landowners)

* Rocky Melchiorri asked Gary Bohan if he had ever thought about what kind of impact a 40B development would have on the schools and said the choice was his to make because he was on the committee.

* Gary Bohan replied that a 40B development would be the choice of the landowners and that there is no one telling anyone what to do and that the landowners could pursue a 40B regardless of the outcome of this zoning article and have every right to develop their property as a 40B tomorrow if that's what they really want to do.

* Rocky Melchioirri asked Gary Bohan if he thought a 40B would be a detrimental use or would be in the best interest for the entire town.

* Gary Bohan replied that the neighborhood refused to be intimidated by having the 40B gun pointed at its head and that as long as it was a "friendly 40B", then the neighborhood wouldn't have a problem and would support this alternative.

* Rocky Melchiorri asked what a "friendly 40B" meant.

* Gary Bohan stated that a "friendly 40B" would be a process whereby the landowners worked with the Planning Board and Community Development to create an affordable housing development that was fair and reasonable.

* Rocky Melchiorri told Gary Bohan that there were no hard feelings but that he thought the Five Seasons plan was better than the other option, the 40B option. Rocky Melchiorri stated that he didn't want to do the 40B option.

NATICK

Affordable housing plan anticipated

Draft proposal calls for using Chapter 40B law

By Benjamin Gedan, Globe Correspondent, 5/7/2003

controversial development proposal that would bring 125 units of affordable housing to Natick will be submitted this week, the property owners said yesterday. The application filing would end months of speculation, since town officials rejected plans for a lavish country club last year.

Owners said the project, to be housed
on 55 acres of former farmland in south Natick, will utilize the state's 40B housing law, allowing it to circumvent the Planning Board and overcome local zoning restrictions.

The draft proposal includes 500 units of housing, which would be 10 times the amount permitted under town zoning regulations, said Ken Soderholm, a Planning Board member.

Long-standing zoning guidelines for the district permit only single-family homes built upon lots no smaller than 40,000 square feet, he said.

Town officials would not comment on the plan's details prior to its receipt by the Zoning Board of Appeals.

Robert Foster, chairman of the Planning Board, said he could not predict whether the project would generate legal challenges, as has the Cloverleaf Apartments project, a proposed 10-story affordable housing complex on Speen Street.

''There will be a lot of issues with this,'' he said, referring to the draft plan.

The property owners are finalizing an agreement with a Rhode Island-based development company, Michael Mabardy, whose family owns the majority of the land, said in an interview yesterday. He declined to identify the development firm.

Detailing the project, he described an array of brick apartment buildings, sprawled across an expanse of woods and wetlands, leaving little room for open space.

Deeply scorned over last year's failed negotiations on the country club, Mabardy predicted that the densely populated complex would anger his Planning Board opponents.

The country club proposal, he said, would have provided the town a pool, tennis courts, and a clubhouse for the public golf course. Accompanying over-55 housing, he added, would have spared the town budget the cost of educating school-age children.

The commercial facility, which would have required a major zoning overhaul by Town Meeting, would have generated an estimated $1 million annually in taxes, Mabardy said.

''I preferred the first development because of what it was going to do for the town of Natick,'' he said. ''They will regret it, but it will be too late.''

Only 5 percent of Natick's housing stock is classified as affordable under state standards, leaving the community susceptible to 40B development projects.

This month, officials in the Community Development Department unveiled a new initiative, called the Housing Overlay Option Plan, to help Natick reach the state-mandated level of 10 percent affordable housing.

The plan calls for a comprehensive zoning overhaul to encourage affordable housing development in industrial zones and in the downtown district. The zoning law amendments could be voted on at next spring's Town Meeting, said Sarkis Sarkisian, director of the Community Development Department.

"This is where we want to see the density occur," he said.

A recent change in zoning law already permits so-called cluster developments with smaller lots permitted for town houses.

Marbady's plan, details of which have circulated for weeks, has been criticized for envisioning a crowded, isolated swath of affordable housing, and threatening to overwhelm schools.

Despite the objections, officials said the Zoning Board of Appeals would have few options to prevent the project.

At his election to the Zoning Board of Appeals Monday night, associate member Michael Radin called the 40B housing law "inescapable."

That message was echoed yesterday, as news of the development plan circulated the town.

"That is why this affordable housing plan is so important," Soderholm said. "So you're not forced to put housing where you don't want housing."

Benjamin Gedan can be reached at gedan@globe.com

This story ran on page B2 of the Boston Globe on 5/7/2003.

DELPHIC ASSOCIATES LLC

345 Union Street • New Bedford, Massachusetts 02740 • Tel: 508-994-4100 Fax: 508-994-5100

May 5, 2003

Ms. Jane Gumble
Department of Housing and Community Development
One Congress St.
Boston, MA

Chairlady Ms. Jane Gumble:

DELPHIC ASSOCIATES LLC Inc., is a real estate development and consulting firm with a concentration in the development of "for sale" housing throughout the Commonwealth in accordance of Massachusetts General Laws 40B,
§ (20-23) – the "Anti-Snob" zoning act.

Delphic takes great pride in designing and developing planned communities and construction designs with unique features that insure sustained property values. A vibrant example of Delphic commitment to excellence is "Chase Estates" in Westwood, a development of 100 single-family homes, permitted in accordance with the 40B statute and the winner of the "Murray-Corman Achievement Award" given by the Department of Housing and Community Development.

Many of Delphic other communities, including the Preserve at Padelford Woods in Berkley have been featured in literature published by the Dept. of Housing and Community Development and Citizens Housing and Planning Association (CHAPA).

As most of us in the real estate business realize that the cost of housing today in Massachusetts is a deterrent to many of our colleges, universities and employers throughout the commonwealth in attracting employees due to the high cost of housing.

The cost of housing is directly attributable to supply and demand, with Massachusetts close to the bottom of ladder on a national basis in meeting demands. Supply of housing in part is limited due to the rigorous process of achieving permits. In many cases the process taking between 2 and 4 years and requiring substantial sums of risk capital.

I applaud the governors' goal of doubling housing starts and I would like to offer the following recommendations for the committee's consideration in their report to the Governor.

1. Housing Appeals Committee

As of April 1, 2003, the **Housing Appeals Committee (HAC)** has a **Backlog** of approximately 59 (fifty-nine) open cases representing approximately 3,102. "rental units" and 2,887. "for Sale" units. The HAC process can take up to 2 (two) years before a decision is rendered, which is still subject to further judicial processes. As a result of this lengthy process many developments are not built, as the applicant has lost site control, state or federal funding or lacks adequate financial resources. **This process must be accelerated.** While it is unclear as to how the committee will rule on these appeals, I believe by clearing the backlog as quickly as possible, a substantial number of units will be built, thus creating a substantial economic stimulus, providing a large number of market rate in addition to providing much needed affordable housing. One temporary or permanent measure to ease the HAC backlog would be to outsource a number of cases to retired judges, etc.

In addition, fees should be increased for filing an appeal of a local Zoning Board of Appeals decision to the Committee. These funds could be used to support additional staff necessary to review cases in an expeditious manner. The HAC process should possibly be changed to a summary judgment process.

2. DHCD Regulatory Changes

The recent regulatory changes approved by the Department of Housing and Community development are only now beginning to have potential impact on applications being submitted to the Zoning Board of Appeals. These changes give substantial control to the municipality. Such as:

? Project Size
? Community Progress
? New Site Eligibility process
? Community Master Plan
? Cooling Off period

I urge the committee to give these regulatory changes an opportunity to work.

3. Awarding Communities that Produce Affordable Housing

There are many communities in which the Zoning Board of Appeals is trying to do the "right thing"; they are working with developers in negotiating ways to produce affordable housing. I would suggest that these communities be given priority in regard to receiving state funding for schools, infrastructure and other municipal needs. A bonus award system should be based on the percentage of affordable housing in a community and recent strides to increasing affordable housing.

4. Counting of Affordable units towards 10% Goal

We are primarily involved in developing "for Sale" housing. The major complaint and concern we receive from the Zoning Boards is the method by which DHCD counts affordable units towards the goal of a community having 10% of its housing stock as affordable.

Presently, the method of counting is as follows:

- Rental Units – All of the rental units are counted towards the affordable housing goal.
- "For Sale" – Only 25% of the units are counted towards the affordable housing goal.

The impact upon community services for a "for sale" housing development is equal to if not greater than that of a "rental housing" development.

I believe there is misnomer in that rental housing is more affordable than for sale.

Based on the US Dept. of Housing and Urban Development (HUD) Median Income Limits for 2003, the median income for a family of 4 in the greater Boston area is $80,800.

Based on these statistics the monthly affordable rent for a 2-bedroom unit with a household of 3 persons would be $1,450. With Market rate units renting for approximately $1650.resulting in affordable housing index of 13.7%

vs.

"For Sale" housing development sales price $180,000, market rate of $360,000. offering an affordable housing discount index of 50%.

Furthermore, an affordable home at an interest rate of 7% (rates today are lower) would cost a homebuyer $1,405 per month in accordance with the attached sales material. This monthly payment does not include the additional tax savings of home ownership.

Home ownership is more affordable than rental, in addition to the pride of ownership, community, etc. Therefore, I believe the committee and / or DHCD should reconsider the method of counting the affordable units.

5. Expedited Process

The statute calls for an expedited permitting process, just the opposite is true. Many Zoning Board of Appeals drag out the hearing process with time between hearings being many times from 4 to 6 weeks. I would suggest a reasonable time limit be established with a period for extension for extenuating circumstances.

6. Title V (State Environmental Code)

Massachusetts is one of 2 (two) or 3 (three) states in the country requiring percolation rates for septic systems of less than 1" in 30 (thirty) minutes.

There are new regulations, which are scheduled to go in affect on January 1, 2004, which has a minimum percolation rate of 1" in 60 (sixty) minutes. I urge the committee to recommend the following:

? Confirm the authorization of the issuance of these regulations.
? Implementation prior to January 1, 2004.

I would like to bring to the committee's attention the action taken by some communities, which continue to burden the permitting process:

? Many towns do not allow apartments in their by-laws.
? Many towns arbitrarily increase minimum lot sizes as large as 1 – 3 acres without scientific justification.
? Increasing application fees for affordable housing contrary to HAC model local rules. (See Duxbury)
? Increasing wetland buffer area to 200' without scientific justification. (See West Tisbury)

If the committee believes it would be helpful, I would be willing to present my comments verbally.

Respectfully Submitted,

Paul E. Cusson
Managing Member
DELPHIC ASSOCIATES LLC

PEC/mw
Encls.

CC:

Tom Gleason – MassHousing
Sen. Harriette Chandler
Sen. Diane Wilkerson
Rep. Robert Fennell
Rep. Harriet Stanley
Mike Jaillet – Westwood Town Admin.
Mark Bobrowski
Howard Cohen – CHAPA
Steve Dubuque – MHPHA
Bennet Heart – Conservation Law Foundation
Jack Clarke – Mass. Audubon Society
Mark Leff – HBAM
Kathy Burns – MassHousing
Clark Zuegler – MassHousing Partnership
Sen. Susan Tucker
Rep. Michael Coppola
Rep. Kevin Honan
Mayor Sharon Pollard – City of Methuen
Al Lima – Planning Dir, Town of Marlborough
Kathleen O'Donnell – Kopleman & Paige
Bill McLaughlin – Rental Housing Assoc.
Gwen Pelletier – MA Assoc. of CDC's
Marc Draisen – Metropolitan Area Planning Council
Kevin Sweeney – HBAM
Benjamin Fierro – Home Builders Assoc.
Werner Lohe, Jr. – HAC Chairman

May 14, 2003

Jane Wallis Gumble, Director
Department of Housing and Community
Development
1 Congress Street, 10th Floor
Boston, MA 02114

Dear Ms. Gumble:

This letter is being submitted to you as testimony on behalf of the Northern Middlesex Council of Governments concerning the proposed revision to the "Comprehensive Permit Law", Chapter 40B §20-23 of the Massachusetts General Laws.

The Northern Middlesex Council of Governments has long advocated revisions to the law to better reflect differences among communities and to allow for greater local control of the process.

The following is presented in support of improving the Comprehensive Permit Law:

BACKGROUND

Chapter 774 of the Acts of 1969, commonly known as "the Comprehensive Permit Law" was created principally to assist in the equitable distribution of subsidized or publicly owned housing among the Commonwealth's communities. The intent was to encourage a "fair share" process so that no single municipality became unfairly overly burdened with low and moderate income housing. This was particularly evident in the Commonwealth's cities which, until the Act's passage were the host to the overwhelming majority of public housing.

The Act focused on application by exception, that is, communities with greater than10% of its housing stock subsidized for low and moderate income housing, .3% of its land area developed per year for said housing or 1.5% of its land area in said use, may consider its regulations "consistent with local needs" and therefore amend, modify, oppose or deny any request for a comprehensive permit as appropriate.

The Act does not require each of the Commonwealth's municipalities to achieve the so called 10% minimum as commonly perceived.

The Comprehensive Permit Law Today

The application of the law today, in practice, differs significantly from its early use and intent. While the law itself has not been amended, the rules and regulations governing the subsidizing agencies of the Commonwealth and the federal government as well as the operation of the Housing Appeals Committee have seen considerable change.

The type of project has changed from earlier models wherein a large percentage of the total number of units would be subsidized, often approaching 100%, and most at a very deep subsidy or publicly owned, to projects having 25% or fewer low and moderate income units and very shallow or indirect subsidy. The application of the Comprehensive Permit Law, in terms of permit applications, appears, by all accounts to directly correlate to periods of (1) growth moratoriums or other development restrictions imposed by municipalities and (2) periods of limited or reduced financial participation by banks on speculative residential building. In other words, when the finance options are diminished for "routine" subdivisions and permits are limited, development interests pursue projects through the Comprehensive Permit Process as the financial backers consider the ventures more likely to be permitted and completed.

The source of most of the contentiousness attributed to the law is related to the scope and size of the proposed project and the density of the dwelling units on a per acre basis. While not always the case, many projects are initially proposed to the local boards with extremely high density in excess of 10 units per acre and considerably high total numbers. Whether this is part of a deliberate negotiating strategy on the part of the developer or simply an attempt to maximize the investment is uncertain. The main point is that proposals are often presented in a fashion that make the process more contentious than cooperative. Local boards are repeatedly reminded by development interests that unless the municipality can show it has 10% of its housing devoted to low and moderate income housing, it must accept the proposal.

What's Unfair

The law, in its current form defines the term "consistent with local needs" as being considered consistent if requirements and regulations are reasonable in view of the **Regional** (emphasis added) need for low and moderate income housing considered with the number of low and moderate income persons in the city or town and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing.

The above considerations are seldom if ever taken into account in determining consistency. Rather, the "10% test" is simply applied. The determination and analysis of local and regional need is critical to the success of the law in its objective of appropriately meeting the housing needs of low and moderate income persons. Housing needs are best determined at both the regional and local levels. Just as the economy is viewed at the regional level, housing markets and needs are similarly structured.

The current law, as noted above, does not apply fairly in its intent to all communities. The housing conditions, supply, costs, conditions in a specific municipality is not considered; rather, only the number of "subsidized" units of housing as qualified by DHCD are used to make an assessment. Many communities can document a significant number of housing units sold within the community on an annual basis for values not exceeding the maximum value of property developed and sold pursuant to the guidelines for low and moderate income housing. For example, over the

most recent period from 5/1/02 to 4/29/03, 411 housing units sold or transferred in the Town of Dracut. Out of this total 108 housing units sold for less than $168,000. This amounts to 26.2% of all housing sales in the Town. Over the same period 179 condominiums transferred with 103 units
sold for less than $168,000 (57.5%). The application of the law in this fashion treats older communities with significant supply of lower cost housing equally with more affluent high cost communities.

The law needs to be amended to reflect the real life differences between communities in consideration of housing values.

Similarly, the regulations currently in use by DHCD regarding the method of counting units as "subsidized" does not allow for the inclusion of rental vouchers, and certificates (Section 8). DHCD maintains that since the Section 8 certificates are mobile, meaning that holders can go to any community they wish, the certificates should not be counted in any particular community. This approach is flawed in that there is a direct correlation between the number of Section 8 units in a given community and the availability of lower cost rental units. Certificates must be counted as part of the community's subsidized units and could easily be counted on an annual basis by DHCD to account for the certificate's mobile nature.

What Needs to be Changed?

First and foremost it should be noted that NMCOG does not recommend that the original and fundamental objective of the Comprehensive Permit Law be abandoned. All communities in the Commonwealth should strive to ensure that a wide variety of housing, including rental housing be available on a fair share basis. The main issue, or fault with the current law is its myopic approach as to how the need is met. Communities with available housing within range of low and moderate income persons should be credited while communities not meeting a reasonable need should be strongly encouraged to do more. Communities capable of documenting progress or attainment of certain minimum

standards should not be burdened with excessive "process" by having to proceed to an appeal to the HAC in order to determine "consistency with local needs" pursuant to the law.

Regulations promulgated pursuant to the operation of the HAC and Commonwealth certification of projects need to be better reflective of the original intent and purpose of the law.

Regulations should also be reviewed by the Legislature on a periodic and timely basis to ensure the intent is met.

Some Proposed Recommendations

Under §20 of Chapter 40B as currently written, at end of 4th paragraph "Consistent with local needs" add the following; or (3) the number of housing units transferred or sold in the prior calendar year at a value not exceeding the maximum sale

price for a low or moderate income person as determined by the Department of Housing and Community Development meets or exceeds 12% of the total number of housing units transferred or sold during the same period.

Add a new section to the existing sections (§23 ½?).

The Department of Housing and Community Development shall promulgate rules and regulations consistent with the preceding sections. Said rules and regulations shall govern the application of the provisions of Sections 20, 21, 22 and 23 of this Chapter and shall include, at a minimum: maximum density limits, the minimum percentages of subsidized low and moderate units in each proposed development project in order to qualify for application of the sections, a provision to allow municipalities to gain credit for units participating in rental voucher programs, and a methodology for determining the local housing needs of a community in view of the regional need for low and moderate income housing considered with the number of low income persons in the municipality affected and the need to protect the health and safety of the occupants of the proposed housing or the residents of the city or town and to promote superior site and building design in the character of its surroundings.

The Department of Housing and Community Development shall, prior to the rules and regulations becoming effective, present said to the General Court for concurrence. The Rules and Regulations, so promulgated and approved by the General Court shall be subject to review and approval by the General Court upon substantive change or bi-annually, whichever sooner.

Please feel free to contact me if you need additional information or have any questions.

Very truly yours,

Robert W. Flynn
Executive Director

RWF:cas
[nfeb-nqi.b]

TOWN OF CONCORD
PLANNING BOARD
141 KEYES ROAD, CONCORD, MASSACHUSETTS 01742
TEL. (978) 318-3290 FAX (978) 318-3291

MARCIA A. RASMUSSEN, PLANNING DIRECTOR

April 29, 2003

Jane Wallis Gumble, Chair
Chapter 40B Task Force
Department of Housing and Community Development
One Congress Street
Boston, MA 02114

Re: Recommended Changes for Chapter 40B Regulations

Dear Ms. Gumble:

We understand The Chapter 40B Task Force, appointed by the governor, is in the process of reviewing changes to the regulations guiding Chapter 40B. Based on our experience with a town-sponsored development, Elm Brook Homes, we would like to propose some changes to the Chapter 40B Regulations that we believe will help create affordable housing that counts toward the 10% target.

Recommendation

1. **Count 100% of units in both rental and ownership projects that contain at least 25% affordable units.**

Under current 40B regulations there is a wide discrepancy in the treatment of rental and ownership housing in terms if how units are counted toward meeting the 10% target. In the case of rental housing, 25% must be made affordable to households at 80% of median but all 100% of the rental units will count toward the 10% target. In the case of ownership housing, only the affordable units for households at 80% of median count toward the 10% target. In both cases, the comprehensive permit allows an override of the town's zoning bylaws to enable denser development than would be permitted. In both cases, based on the Ardemore decision, as long as the project is not in compliance with zoning the units must remain affordable in perpetuity unless the town imposes a specific time limit. The market rate rentals do not have pricing controls and therefore do not necessarily benefit the town more than the ownership units in a project. Ownership housing is a goal of state and federal affordable housing programs so there should not be an advantage given rental housing where ownership is more desirable and appropriate.

2. **As an alternative to all of the ownership units counting towards the 10% target, at a minimum, projects that are developed under local programs that include a broader definition of affordability (above 80% up to 150% of median) and restrict the resale through deed restrictions should also be counted toward meeting the 10% target.**

An example of this is the Elm Brook development that was constructed in Concord in 2002. All 12 homes are deed restricted in perpetuity based on the price and income tier that the family qualified for in the initial purchase. The income groups served were distributed as follows: three units to households at 80% of median, two units to 110% households, and seven units to households at 140% of median. The deed restriction is the same for all units with the income varying.

Elm Brook Background

The Elm Brook development comprises 12 single-family, detached homes on a thirteen-acre parcel located on Virginia Road. The site is situated on and surrounded by a meadow and woods that will be preserved as open space and conservation land. The land was deeded to the Town by the Spaulding Company as part of a rezoning at the 1995 Town Meeting, and was approved for development of housing at the 1997 and 1998 Town Meeting. The Town issued an RFP in 1999 to select a suitable developer. Concord Housing Trust, a local 501(c)(3) non-profit development corporation, teamed with an experienced developer of affordable housing, New Atlantic Development Corporation, to submit a plan that is sensitive to the natural surroundings and the character of the neighborhood. The project was permitted under a Planned Residential Development (PRD), a special permit development within the Concord Zoning Bylaw, which requires units to be sold to families between 110%-150% of Area Median Income. CHT went beyond the PRD requirements to offer homes to three families with incomes below 80% AMI so that the units would qualify in the Chapter 40B Inventory. Town boards (Planning Board, Natural Resources Commission and the Zoning Board) overwhelmingly approved a special permit and order of conditions for the plan and the Town donated the land for $1 to the CHT.

All of the homes were priced to be affordable to the target income groups that met the town objectives. There were 230 applicants in the lottery held by the town. An appraisal of the homes for the bank revealed that the market price was approximately $525,000 but the homes sold for $150,000-$300,000. The higher priced homes still provided a significant price break for moderate income buyers. This enabled the Town to provide housing for six teachers, a park ranger, nurse, social workers, and others who could not otherwise afford to live in Concord.

All of the homes (not just the 80% units) were sold subject to deed restrictions to ensure that they remain affordable to income-eligible buyers in the future. Owners are free to sell their homes at any time. An "Affordability Covenant" requires that owners live in the home as their principal residence, specifies the process they must follow if they choose to sell their home, and establishes a mechanism for determining the price that the home may be resold. The resale price is limited to an amount that will be affordable to another family of the same income tier that the original family was earning at the time of purchase. These restrictions last as long as the home exists and are binding to all owners of the home.

Conclusion

The Commonwealth is making comprehensive planning for housing a higher priority than ever before through the Community Preservation Act, Chapter 40B Planned Production, and Executive Order 418. As more towns develop their own affordable housing goals there will be a wide range of strategies to accomplish them. Inconsistencies like those related to defining what constitutes affordable housing (80% of area median income for 40B, 100% for CPA, and up to 150% for E.O. 418 units) and what counts under 40B need to be reconciled so that housing plans, programs, and funding work together and not at odds with each other. Concord, as well as many high cost towns, would like to provide its 10% share but it needs to be able to do so within the constraints

of limited land availability and limited access to state or federal subsidy programs that reach the 80% households; that may mean serving a higher income population than in other towns. Expanding the definition of what counts under 40B will help recognize and support community based programs for affordable housing. Chapter 40B should not only be the stick but the carrot to encourage towns to do the right thing to create affordable housing that fits the needs in their own community.

Sincerely,

Toby Kramer
Planning Board Member

Charles Phillips
Affordable Housing Committee

Cc: Concord Board of Selectmen
Clark Zeigler, Executive Director of MHP
Kathleen O'Donnell, Kopleman & Paige
Cory Atkins, State Representative
Susan Fargo, State Senator

A Developer's Perspective to Chapter 40B
An Alternative Option

Over the past several years, real estate values have increased noticeably. This drastic change in values is directly attributed to the lack of available vacant land suitable for residential construction and the desire of many suburban municipalities to prolong the review and issuance of the necessary permits as way to delay or stop construction. This is especially true for residential developments because municipalities often view residential projects as having the greatest impact on services, such as, schools and infrastructure.

Developers who have proposed housing under Chapter 40B of the MGL have provided some relief to the housing crisis. Chapter 40B was enacted for the sole purpose of creating affordable housing in municipalities where minimum zoning requirements were too restrictive to allow reasonably priced homes or provided no zoning for the intended residential use. In the seventies and early eighties, Local Housing Authorities (LHA) were recipients of State funding for multi-family elderly and family subsidized housing but many had difficulty finding land with proper zoning that allowed such developments. Only a handful of communities, usually cities, had zoning that allowed such uses. Suburban communities with their exclusionary zoning bylaws did little or nothing at all to contribute toward the production of housing. The suburban LHAs under the direction of the Commonwealth had to use Chapter 40B and the comprehensive permit process in order to develop such housing, hence the term "anti-snob zoning". Of course, in the past municipal objections to affordable housing were associated with undue concentration of low and moderate-income housing. These large developments were often magnets for crime and other problems that many communities did not want. Although objections to undue concentration of affordable housing was successfully reversed by the State's introduction of programs, such as, the Local Initiative Program (which promoted smaller less dense projects, and more importantly, the construction of a mix of affordable with market rate housing) today, municipal objections to housing relate to their desire to preserve open space.

Many communities acknowledge the need to develop reasonable priced housing but often do little to provide the opportunity. Municipalities cite that they are in support of affordable housing but residents in neighborhoods where affordable housing is proposed have a "not in my backyard" attitude. Municipalities are for affordable housing and the preservation of fast disappearing vacant land but have zoning bylaws that are too restrictive requiring, for example, minimum three and four acre lots. These contradictory positions lead this developer to think that the environmental concerns communities raise are not for the purpose of conservation of open space. It is rather a tool by which a community can delay and hope to stop developments in its tract. If preservation of open space was the goal, the community would

have adopted a zoning bylaw that included cluster zoning or zoning that allowed higher density, perhaps concentrating in town centers or in areas where municipal sewer and water infrastructure are in place.

Communities are for affordable housing but often feel that Chapter 40B is a legal tool forced upon the communities by the Commonwealth taking away their rights to decide their future. Planning Boards are most aggrieved by this process. They believe the "home rule" is no longer valid when a Chapter 40B projects are introduced and the Zoning Boards of Appeals are designated as the authority to approve these projects. Furthermore, local officials feel pressured by the notion that if the community's affordable housing stock is less than 10%, the ZBA denial of the comprehensive permit often results in the developer's appeal to the Housing Appeals Committee, whose decision is frequently in favor of the developer.

A developer's threat to use Chapter 40B as a way to secure concessions from the Planning Boards has further compounded the local non-acceptance of Chapter 40B. During a conventional site plan review process, if the conditions imposed by the Planning Boards are found unacceptable, some developers have suggested that they will abandon their proposal in favor for a denser affordable housing development pursuant to Chapter 40B.

Despite these circumstances and procedural abuses by both the communities and the developers, this developer strongly believes that Chapter 40B should not be abolished since it is the only vehicle that provides an option to the production of much needed housing, especially affordable housing. Chapter 40B should be revised to include new rules and regulations and in some instances abolish certain procedures in order to make those rules and regulations more effective.

Besides changes to the laws, many communities need to acknowledge the current housing crisis and overcome the obvious negative perceptions many local officials have about Chapter 40B projects. The mere municipal acceptance of its share of the obligation to promote and provide for the opportunity to create housing will lead to a successful zoning bylaw and other changes. The following is one such proposal that may lay the foundation for an alternative to Chapter 40B as a way to promote the production of affordable housing in our Commonwealth:

a. Establish an Affordable Housing Overlay District (AHOD). The size of the development in an overlay district could be based on the size of the local population and the number of housing units built in the community. A community with a population of 30,000 could have an overlay district that will allow for larger housing developments than in a community that has only 4,000 inhabitants. The assumption here is that the larger the

community the higher the need for affordable housing. Development in an overlay district could also include the following considerations:

- An AHOD will be an alternative development tool to the Chapter 40B process. Communities without an approved AHOD will continue to be subject to construction of affordable housing pursuant to Chapter 40B.

- The AHOD could be proposed anywhere within the boundaries of the community on any parcel regardless of the property's zoning classification.

- Municipalities consider and approve a maximum of two developments at any time. All future proposals can only be submitted once the construction of one of the two projects is completed. At that time a community can consider proposals to replace the one that was recently completed.

- A developer proposing affordable housing under AHOD in a municipality with multi-family zoning approved by DHCD, must comply with the local multi-family zoning bylaws in effect.

- A developer prior to proposing affordable housing under AHOD must show evidence that it has approval to develop affordable housing under one of the Federal, State or Local sponsored affordable housing programs.

- Communities can allow greater density in areas where sewer and water services are available as an alternative to building in areas without these services.

b. The minimum requirements for the AHOD must be prepared by the DHCD for those communities that do not have provisions for multi-family in their zoning bylaws. Communities that adopt the AHOD will no longer be required to have the ZBA issue a comprehensive permit under Chapter 40B. The duties for site plan review under AHOD will be assumed by the Planning Board pursuant to the requirements found under Chapter 40A.

c. Communities that have adopted AHOD will no longer be required to comply with the 10% requirement currently imposed by Chapter 40B. A community with an AHOD does not need to have 10% of their housing stock classified as affordable housing and the developer cannot threaten or pressure the community to create affordable housing since such housing will now be allowed by right.

d. Eliminate Executive Order 418. Municipalities that have adopted AHOD should be awarded state funding especially for infrastructure improvements, such as, sewer and water extensions, especially in areas where affordable housing is proposed. Communities with sewer and water moratoriums imposed by DEP should be eligible and given priority for state funding when affordable housing is proposed and when such housing would need these improvements.

e. Communities that adopt the AHOD do not have to fear their decision being overturned by the HAC since applicants that propose affordable housing will now have to file their proposal to the Planning Board pursuant to Chapter 40A.

f. Establish statewide monitoring procedures for the maintenance of the affordable units. The DHCD should be designated as the public agency that oversees and maintains the affordable housing inventory to assure that the affordability is maintained in perpetuity.

g. Allow the use of the AHOD for the conversion of expiring use projects.

Preparing and making available to communities the AHOD for adoption may take some time. Communities and developers in the interim will have to work with Chapter 40B and follow all the rules that are still in effect. Communities who aspire to develop affordable housing will succeed regardless of the current limitations and can overcome all obstacles to the development of affordable housing.

Thank you for the opportunity to express this opinion and hope that it will provide an alternative to Chapter 40B initiated developments.

Sotir Papalilo, President
Westwood Associates, Inc.
370 Main Street – 7th Floor
Worcester, Massachusetts 01608

Chapter 40B Task Force
April 14, 2003

Lynn Goonin Duncan, AICP
Director of Planning & Conservation, Town of Wilmington

Overview of Comments

1. 40B negotiation process has worked (what we have been able to achieve)
2. Town efforts to create affordable housing have been mixed. Limited number of affordable units created.
3. Recommended change to 40B
   Why homeownership units should count – an overview of Wilmington 40B projects and a look at our numbers.

Hello 40B Task Force,

I live in Watertown and just came from a zoning meeting last night where our local board denied Lincoln Properties a special permit to build 224 apartments (10% of which would be affordable housing) in my neighborhood.

As I was leaving, the Lincoln Properties developer, Mr. Noone, said to his project engineer "……..well now we'll just go for 40B".

According to a neighbor, Mr. Noone talked to him last week after the Conservation Commission and said something to the effect "you know I could have gone for 40B and built 500 apartments ... work with me".

This is an example, a very real example for me and my neighbors, of how developers bully neighbors into accepting what the neighborhood does not want. How can this be? I know this is not what 40B was intended for ….. yet 40B is being used as an weapon to overcome neighborhood planning efforts and local zoning boards.

Not only is 40B used as the developer's weapon of choice, 40B is just not working. According to statistics I read, only 17,500 affordable units have been added in the past five years. It's not working.

We need to put 40B on hold until we can figure out a way to make it work -----40B should be a tool to help build affordable housing ---- not a weapon developers use to bully neighbors.

Sue Jenkins
95 Rutland Street
Watertown, MA 02472

TOWN OF MANSFIELD
BOARD OF SELECTMEN
Six Park Row, Mansfield, MA 02048
(508) 261-7372

Daniel Donovan	*Steven W. MacCaffrie*	*Michael W. McCue*	*David W. McCarter*	*Louis P. Amoruso*
Chairman	*Clerk*	*Vice Chairman*	*Selectman*	*Selectman*

April 9, 2003

Ms. Nancy Andersen, Manager of Rental Division
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108

Re: 40B Project, Fairfield Green, Mansfield, Massachusetts

Dear Ms. Andersen:

The Board of Selectmen, upon initial review of the proposed Fairfield Green 40B project, desires to express our opposition to the proposal as submitted. As the policy board of corporate Mansfield, the magnitude of the project will have a profound impact on our local infrastructure, school system, water and wastewater operations. As you may know, over the past ten years, the Town of Mansfield has been, and continues to be, one of the fastest growing communities in Southeastern Massachusetts realizing over a 35% increase.

Based upon our initial review, the project proposes to connect to public sewer. It is the Town's understanding that the State Department of Environmental Protection will not issue wastewater connection permits until the Town has completed the Comprehensive Wastewater Management Plan. Our sewer capacity is above the 80% threshold, requiring the above-mentioned plan to be completed by the Town. This project will certainly place a strain on our sewage treatment and disposal operations at a time when we can least afford to accommodate the magnitude of additional flow from this project. Given the location of the Fairfield Green proposal, at least one, and perhaps more, sewer lift stations will be needed to pump waste from this site a considerable distance to existing sanitary sewer mains. These lift stations will place a maintenance and repair burden that would not exist on a site utilizing a gravity system. Likewise, the Town is very concerned about our drinking water supply. The town currently has a seasonal water use deficit that forces outdoor water use restrictions and has required outdoor water use prohibitions during times of peak demand. The projected number of bedrooms proposed at 384 will result in the equivalent consumption of 128 three-bedroom homes. If the State was inclined to ignore our concerns and grant project approval, such approval must be conditional so that no more than 45 units are constructed in a single year. This will permit a

phased-in approach whereby the strain on our water system can be gradually introduced into our water system. Furthermore, our water connection policy requires that the developer replace/conserve water on a two-to-one ratio. The developer will be required to save two gallons of water for every one gallon committed to the project. In order to achieve this savings and to minimize the impact on our water system, a phased-in approach to the construction of units will be necessary.

The project will introduce a large amount of traffic onto West Street, which is already overburdened with a significant increase in traffic volume due to our population growth (as stated earlier). West Street is a narrow road, 18 to 24 feet in width, with limited sight distance, due to a hill and a curve in the location of the proposed project. The State should require the applicant to complete a traffic study and analysis, and the results should be reviewed by the Massachusetts Highway Department prior to the issuance of any site eligibility letter.

Furthermore, the local Zoning Board of Appeals recently closed a public hearing on a 42-unit apartment complex under the 40B process. Two other 40B projects are filed with your office and the Town of Mansfield. Public hearings on those projects will open at the end of April. The first is a 24-lot single-family "for sale" development including seven (7) affordable homes. The second is a proposed 72-unit rental project whereby the Town believes that the applicant may not have control of the site. Should the Zoning Board of Appeals approve all proposed projects articulated in this letter, an additional 126 units of affordable housing will be credited to our ten percent affordable housing threshold mandated by the State. Presently, based on the number of affordable housing units currently in our community, the Town only needs 231 additional affordable housing units to reach our ten percent affordable housing threshold. The Fairfield Green project, if approved, will raise the percentage of affordable units in Mansfield well above the 10 percent threshold while abutting communities are not close to the ten percent threshold requirements. Under this scenario, only 105 units of the Fairfield Green project would be necessary to reach our ten percent threshold goal. Should the project approval at the State level move forward, the Town adamantly desires to reduce the project scope and size to no more than 105 units of affordable rental housing. If at a future time, the Town falls below the threshold, then an additional phase of the Fairfield project could be permitted.

Finally, the potential impact to the school system will be enormous. The applicant must be required to prepare a complete fiscal impact analysis incorporating all aspects of anticipated municipal services to be impacted from this project. Furthermore, the Town is presently dealing with a strained budget, and an increase in demand on both the municipal and the school services will result in further cutbacks and an overall reduction in services to our residents.

While the Town of Mansfield remains committed to affordable housing initiatives, such large-scale impacts based on project size places an unusually large burden on a high growth community at a time when we can least afford such impacts.

Sincerely,

Daniel Donovan
Chairman, Board of Selectmen

Cc: John O. D'Agostino, Town Manager
Shaun Burke, Director of Planning & Development
Richard Lewis, Conservation & Environmental Planner

To: Chapter 40B Task Force
From: Andrew Friedlich
Re: Changes to Chapter 40B
Date: April 14, 2003

Madame Chair, Chapter 40B Task Force members:

My name is Andrew Friedlich. I have been on the Town Meeting Member Executive Committee since 1990 and was the Chair of the Lexington Town Meeting Members from 1996 through 1997 and again from 2000 to 2002. Additionally, I was a member of the Selectmen's Strategic Planning and Implementation Group, the precursor of the Town's Long Range Planning Committee and the 20/20 Vision undertaking. Lexington is a community which has consistently been supportive of increasing our affordable housing stock. Thus, we have been able to attain a 7.06% affordable housing percentage through a mix of "friendly" large 40B projects, conversion of vacant schools to affordable housing and building scattered site houses throughout the town.

I stand before you today seeking changes to Chapter 40B that will provide communities with the data they need to adequately analyze 40B proposals. Given Lexington's experience over the last year with a Comprehensive Permit proposal, much has been learned. It was based on this 40B submission that I testified at the two public hearings last fall about the necessity to apply land acquisition guidelines to New England Fund proposals. It is with great appreciation that this change has been made to the regulations. However, we still find ourselves in a position where Zoning Boards of Appeal (ZBAs) are ill equipped to handle or analyze 40B submissions. In most cases, a ZBA is so concerned about a community's rights with a submission, they defer towards the developers wants rather than upholding the town's values. This is seen time and time again where negotiations begin with the developer's requested density and go down from there rather than starting at the town's by-right density and go up to that point where (based on pro forma analyses) the developer attains the 20% maximum density as specified in Chapter 40B. This has been further compounded to the directions ZBAs get from DHCD's "Guidelines for Local Review of Comprehensive Permits" and by the consultants paid through State funds to help ZBAs negotiate with developers. In both cases, ZBAs are instructed that they only need concern themselves with the design aspects of a proposal and not analysis of the pro forma financial statements. This attitude disempowers a community from having any control over the impact of a CP project. As DHCD staff will tell you, it is only through incremental pro forma financial analyses that the density at which the 20% maximum allowable profit can be calculated.

It was for this reason that I placed an Article on Lexington's Town Warrant. It provided guidelines for both the Board of Selectmen and the ZBA and included specific criteria which developers would have to meet during the process. The motion under the Article was:

Article 21 40B COMPREHENSIVE PERMIT

MOTION: That the following resolution be adopted:

Resolve that, given the impact of high-density developments on the Town's residents and on Lexington's character, Town Meeting endorses the following guidelines for submission of 40B applications to the Town of Lexington. As stated in the MassHousing / Local Initiative Program (LIP) acquisition guidelines, the permissible land cost to be used will be the lesser of purchase price or fair market value as currently zoned. Notwithstanding the MassHousing/LIP guidelines and to ensure economic viability of a minimum-density project, immediately after the proposal submission and well before the closing of public hearings by the ZBA, the developer shall a) fund an independent "as zoned" appraisal of the development site, b) submit pro forma financial statements starting at a multiple of four closest to the by-right density and increasing by increments of four units, and c) fund an independent review of the pro forma financial statements for the proposed development. The appraisal and financial peer review will be conducted by firms approved and selected by the Town.

Through implementation of such an Article, a community is able to minimize the obtrusive nature of a 40B proposal when it is in more sensitive areas such as being in the midst to a residential neighborhood. Lexington's affordable housing guidelines as specified in the Planning Board's Comprehensive Plan state:

> "We need to achieve that diversity of opportunity through appropriate means. Importantly, that diversity should be achieved without sacrificing the qualities of existing residential environs through unreasonable density departures, introduction of disruptive traffic or other impacts, or building in a way that is inconsistent with its context."

Given the divergence from these stated affordable housing guidelines with our recent 40B experience, our being able to implement the criteria specified in the Article would empower the Town to have control over such 40B projects. It is through the ZBA's continually hearing it should not involve itself with pro forma analyses that the community now finds itself in a situation where we are impacted by what I term as "inappropriate densification". Based on powers the ZBA has under current 40B regulations but due to inexperience and fear of developer appeal, it is untenable to be in our current situation where the developer has appealed to the HAC and the abutters have brought suit against the developer and the ZBA. Communities being able to enact the criteria specified in my Article would provide ZBAs with the data needed to minimize inappropriate densification. In no way would a developer having to abide by the stated criteria make a project uneconomic, particularly if the ZBA allows the associated costs to be included in the pro forma financial statements. While other communities have shown great interest in my Article, it was decided to indefinitely postpone it at Town Meeting since it would be one community acting on its own and instead present it to the 40B Task Force for state-wide implementation through regulatory change.

The 40B Task Force's recommending such a change would be totally consistent with the legislative intent of Chapter 40B which states:

> "Consistent with local needs", requirements and regulations shall be considered consistent with local needs....to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied equally as possible to both subsidizled and unsubsidized housing."

Additionally, as I have offered to do, it would be necessary to rewrite DHCD's "Guidelines for Local Review of Comprehensive Permits". ZBAs need far better instructions as to what they are able to do in analyzing 40B submissions. It is only through these changes that ZBAs can meet their responsibilities to their communities and not view 40B proposals as being counter to community values.

To further improve how ZBAs undertake 40B proposals, I recommend that land appraisals be done up front in the process. Currently, the 40B issuing program (LIP, MassHousing and NEF) does its land appraisal once the ZBA has finished its hearings and has issued a permit. During the hearing process, the ZBA has no idea of the appropriate land value to use should it want to review the pro forma financial statements. Given the way in which the land acquisition cost drives density in the pro forma financial statements, we are now in somewhat of an iterative situation since it would be necessary for the ZBA to adjust its findings after the issuing program has performed its review.

In closing, it is up to this Task Force as to how 40B submissions are regarded by communities. There are obvious reasons why Comprehensive Permits have paid so much attention by both the media and the legislature for towns have been disempowered through not offering the proper tools and instructions on how to review 40Bs. I would rather that we implement the changes I have recommended and work together with a rational 40B process which will produce much needed affordable housing.

Sincerely,

Andrew Friedlich
22 Young Street
Lexington, MA 02420

AJFRIEDL@aol.com
Cell: (781) 223-7883

ARTICLE 21
COMPREHENSIVE PERMIT GUIDELINES

19 March 2003

Submitted to:
Town Meeting
Lexington, MA

Prepared by:
Andrew Friedlich
Town Meeting Member
Precinct 5

Nature of a 40B development

- Chapter 40B of the state law was enacted to facilitate the creation of affordable housing
- General provisions of 40B
  - Allows developer to request a higher density development than allowed by local zoning by-laws
  - Empowers the ZBAs to impose conditions on the development, provided such conditions do not render the project uneconomic
- Recently, 40B has degenerated into a loophole enabling developers to realize huge profits
  - at the host community's expense
  - in a manner contrary to the spirit of 40B
- Article 21 seeks to provide
  - Required profitability for the developer
  - 25% affordable housing for the town
  - Minimum impact for immediate neighbors of future 40Bs

40B Sponsors and Guidelines

- 40B projects are sponsored mainly by three state programs
  - MassHousing (MHFA)
  - Local Initiative Program (LIP)
  - New England Fund (NEF)
- All three programs require that the
  - Profit may not exceed 20% of development cost
  - Development include minimum of 25% affordable housing
- MHFA and LIP also require (among other things) that
  - "The development proforma must reflect a land value based on the lower of
    - 1) last "arm's-length" transaction,.. or
    - 2) value under pre-existing zoning.."
- NEF had no explicit guidelines on land cost or other matters
    - Following testimony by Friedlich/Galaitsis at DHCD public hearings, land acquisition guidelines also apply to NEF as of January 1, 2003

Interpretation of Guidelines

- By definition, a 40B development is always more dense than allowed by local ZBLs
- Nevertheless, developers have also resorted to an inflated land cost in order to
  - further increase the density of the development
  - even though it is not in the spirit of 40B
- In other words,
  - As the land cost increases
  - Total Development Cost (TDC) increases
  - Developer dollar profit (~20% TDC) increases
  - The land owner takes a bigger amount for his land
  - The developer takes a bigger dollar profit from the parcel
  - The town takes more affordable units
  - The neighborhood is left with a much heavier impact/burden

Lowell Street Case Study

- The Lowell St 40B developer (acting against the land cost guidelines of 40B) has attempted to inflate his profit
  - By agreeing to pay an escalating land cost (up to $5.1 million) to the previous owner, depending on number of units allowed by the ZBA
  - Even though two professionally conducted appraisals produced $1.33 and $1.7 million land cost

Number of Units			Land Price ($million)		
Affordable	Market	Total	Base	Increment	Total
1	3	4	2.7	0	2.70
2	6	8	2.7	0	2.70
3	9	12	2.7	0	2.70
4	12	16	2.7	0	2.70
5	15	20	2.7	0	2.70
6	18	24	2.7	0	2.70
7	21	28	2.7	0.15	2.85
8	24	32	2.7	0.60	3.30
9	27	36	2.7	1.05	3.75
10	30	40	2.7	1.50	4.20
11	33	44	2.7	1.95	4.65
12	36	48	2.7	2.40	5.10

Lowell St Development $Profit

- The appraised land cost of
  - $1.7 million leads to a 43.8%, $7.55 million (48-unit) profit
  - $1.7 million provides excellent profitability at 16-units
  - $1.5 million (average of $1.33 and $1.7 million) provides excellent profitability at ~12-units and a nice killing at 16 units

Case #	Units	Land Cost $ million	Sales $/sqft	CarryingCost ($K)	Profit %	Profit $million
1	48	1.70	285	441	43.8	7.55
2	38	1.70	285	441	36.3	4.99
3	24	1.70	285	441	24.7	2.51
4	24	1.70	310	441	34.4	3.51
5	24	1.70	310	220.5	37.4	3.74
6	20	1.70	285	441	18.4	1.64
7	20	1.70	310	441	27.6	2.47
8	20	1.70	310	220.5	31.0	2.70
9	16	1.70	310	441	17.7	1.35
10	16	1.70	310	220.5	21.3	1.57
11	12	1.70	310	220.5	14	0.90
12	16	1.50	310	220.5	24.6	1.77
13	12	1.50	310	220.5	17.6	1.10

Development Plans Comparison

- Here is how 40B is being abused
  - Left sketch shows an approximate "as zoned" plan
  - Middle sketch shows the 32-unit plan submitted by developer
  - Right sketch shows a 16-unit plan
    - Supported by incremental pro-forma analysis
    - Consistent with Lexington's comprehensive plan

Intent of Article 21

This resolution is intended to assist in providing guidance to the Lexington Zoning Board of Appeals (ZBA) and Board of Selectmen. Given the impact of high-density developments on the Town's residents and on Lexington's character, the ZBA will apply MassHousing land acquisition guidelines for a minimum-density profitable development as a condition to granting a Comprehensive Permit. Notwithstanding the MHFA guidelines, immediately after the proposal submission and well before the closing of public hearings by the ZBA, the developer shall

a) fund an independent "as zoned" appraisal of the development site,

b) submit pro forma financial statements starting at the by-right density and increasing by increments of four units, and

c) fund an independent review of the pro forma financial statements for the proposed development.

The appraisal and financial peer review will be conducted by firms approved and selected by the Town; or act in any other manner in relation thereto.

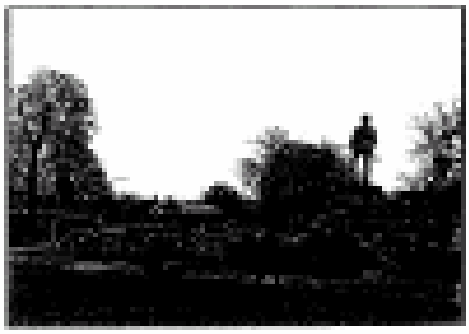
- **Proposed article provides**
  - **Required profitability for the developer**
  - **25% affordable housing for the town**
  - **Minimum impact for immediate neighbors of future 40Bs**

PLANNING BOARD

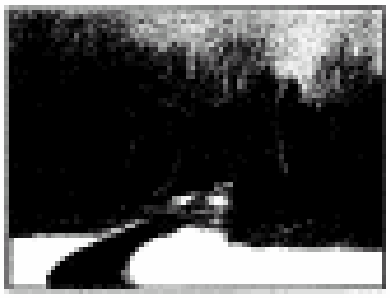
Comprehensive Plan

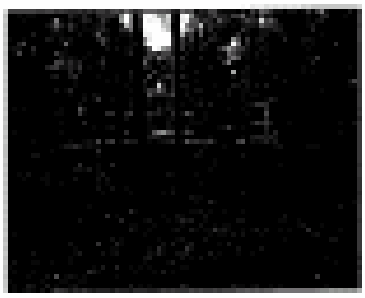
The First Four Elements:

- **Land Use**
- **Natural and Cultural Resources**
- **Housing**
- **Economic Development**
  - **and Implementing Measures**



THE LEXINGTON WE WANT





MARCH, 2002

GOALS AND OBJECTIVES

Lexington seeks to have a socially and economically diverse community, both over the whole of the community and within its neighborhoods. In support of that fundamental social goal, a basic housing goal is to provide housing opportunities supportive of the population diversity we seek.

As pointed out in the 1985 *Lexington Comprehensive Plan Housing Element*, and as is still true today, we seek a better fit between our housing supply and the emerging needs resulting from demographic change. Even as Lexington's average household size has steadily grown smaller, our housing units have continued to grow larger. Young adults are largely priced out and disproportionately so, too, are most ethnic minorities. We applaud diversity, but we are losing it along a number of dimensions. One clear housing goal is to seek to enable at least our own children to live here, and more broadly to provide housing opportunities for a broad social and economic spectrum. We want to accommodate not only the classic American husband/wife/kids family but also individuals living alone, seniors, young adults, those with physical or mental disabilities, and a variety of others.

Given housing data that is twelve years out of date, but about to be updated by a decade, this is an inappropriate time to set quantitative goals for housing, but some sense of scale can reasonably be provided.

For Lexington, meeting our housing affordability needs will not only require attention to the needs of lower income groups, but will also require attention to the needs of a growing segment of middle income households who also are being priced out of Lexington. Our community is less complete without that diversity. The beneficiaries of our efforts to accommodate diversity are not only those who otherwise could not live here, but are all of us, enriched by having a more complete community for ourselves and for our families to the extent that efforts toward diversity succeed.

We need to achieve that diversity of opportunity through appropriate means. Importantly, that diversity should be achieved without sacrificing the qualities of existing residential environs through unreasonable density departures, introduction of disruptive traffic or other impacts, or building in a way that is inconsistent with its context. Diversity should exist throughout the Town in all of its neighborhoods, not just within zones. The principles of sustainability are not inconsistent with these goals, and they should be respected in housing, just as for other efforts.

The small number of additional units, for which there is land capacity within current zoning, makes achieving housing goals difficult, since almost all of the housing that the Town will contain at "build-out" already exists. Change through trends in occupancy of existing units will be a far more powerful determinant of the Town's future demographics, than change through shaping the relatively small increment of new structures that is projected. Analyses made for this *Plan* indicate that Lexington will have about 12,000 housing units at "build-out, an increase of fewer than 1,000 units."[1] While this planning process has not resulted in firm quantitative goals

[1] In the Land Use Element two analyses are shown: a Projection based on continuation of past policies and trends, and an Alternate analysis reflecting choice of more aggressive open space protection and support for creation of units through conversion of existing structures.

Article 21 40B COMPREHENSIVE PERMIT

MOTION: That the following resolution be adopted:

Resolve that, given the impact of high-density developments on the Town's residents and on Lexington's character, Town Meeting endorses the following guidelines for submission of 40B applications to the Town of Lexington. As stated in the MassHousing / Local Initiative Program (LIP) acquisition guidelines, the permissible land cost to be used will be the lesser of purchase price or fair market value as currently zoned. Notwithstanding the MassHousing/LIP guidelines and to ensure economic viability of a minimum-density project, immediately after the proposal submission and well before the closing of public hearings by the ZBA, the developer shall a) fund an independent "as zoned" appraisal of the development site, b) submit pro forma financial statements starting at a multiple of four closest to the By-right density and increasing by increments of four units, and c) fund an independent review of the pro forma financial statements for the proposed development. The appraisal and financial peer review will be conducted by firms approved and selected by the Town; or act in any other manner in relation thereto.

Andrew Friedlich
(781) 863-8372

CITY OF MARLBOROUGH
PLANNING DEPARTMENT
140 Main Street
Marlborough, Massachusetts 01752
Tel (508) 460-3799 Facsimile (508) 460-3698 TDD (508) 460-3610

ALFRED J. LIMA,
Director

April 9, 2003

Senator Harriet Chandler, Chair
Senate Committee on Housing and Urban Development
Representative Kevin Honan, Chair
House Committee on Housing and Urban Development
State House
Boston, Massachusetts

Dear Senator Chandler and Representative Honan:

During the deliberations of the Governor's 40B Task Force, you both raised the issue of the affordability of the affordable units in Chapter 40B developments. Specifically, you noted that the rents for the affordable units appear to be not within reach of households in the low to moderate-income range.

In Marlborough, this issue has been addressed by placing households with Section 8 vouchers in the affordable units at Avalon Orchards and at Jefferson at Wheeler Hill. At Avalon Orchards, a total of 26 of the 39 affordable units are Section 8 placements, accounting for 67% of the affordable units. Approximately 70% of these Section 8 placements were prior residents of Marlborough. The second 40B development in Marlborough, Jefferson at Wheeler Hill, is not yet completely occupied; however, to date the Marlborough Housing Authority alone has placed at that development 13 families under the Section 8 Voucher Program.

As the attached memo from Marlborough Housing Director Betsy Roszko explains, the average income ranges for the City's Section 8 vouchers at Avalon Orchards is $11,151 for the one-bedroom units and $16,552 for the two-bedroom units. Section 8 vouchers therefore allow low and extremely low-income households to live in these 40B developments.

I can't speak for other communities; however, Marlborough's experience shows that it is possible for persons of very low income to live in Chapter 40B housing.

If you have any questions on this issue, please feel free to contact me.

Sincerely,

Alfred J. Lima

Attachment

Cc: Fred Habib, DHCD

MARLBOROUGH COMMUNITY DEVELOPMENT AUTHORITY
HOUSING DIVISION
240 MAIN STREET, MARLBOROUGH, MASSACHUSETTS 01752

FAX 508 460-3749 **508 624-6908** **TTY 508 460-3610**

April 1, 2003

TO: Al Lima
FROM: Betsy Roszko, Housing Director

Attached is a copy of the most recent (2003) Income Limits used for our Section 8 Voucher Program. We are required to issue 75% of our estimated vouchers on an annual basis to extremely low income families/individuals.

We presently have 11 apartments at Avalon Orchards under our Section 8 Program. Five are 2 BR units and six are 1 BR units. The average gross annual income for the families in the 2 BR units is 16,552; the average gross annual income for those in the 1 BR units is 11,151. As I said there may be other families under Section 8 in the complex-could be administered by SMOC or other Local Housing Authorities.

The gross rent (rent plus utilities) at Avalon is just about at the Fair Market Rent scheduled published by HUD (attached is the current FMR schedule). Avalon's 1 BR rent is slightly over the FMR and their 2 BR rent is slightly under the FMR.

We presently have 13 families under the Section 8 Voucher Program at Jefferson at Wheeler. Six are 2 BR units and seven are 1 BR units. I have not looked up average income (assume about the same). Let me know if you would like that information.

Hope this will be helpful.

Effective
October 1, 2002

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH FMSA	953	1074	1343	1680	1972	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middleesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA FMSA	614	809	993	1234	1407	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 082102

TATE:MASSACHUSETTS		INCOME LIMITS							
	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
arnstable--Yarmouth, MA MSA									
FY 2003 MFI: 58700	30% OF MEDIAN	12650	14450	16300	18100	19550	21000	22450	23900
	VERY LOW INCOME	21100	24100	27150	30150	32550	34950	37400	39800
	LOW-INCOME	33750	38600	43400	48250	52100	55950	59800	63700
oston, MA--NH PMSA									
FY 2003 MFI: 80800	30% OF MEDIAN	16950	19400	21800	24250	26200	28100	30050	32000
	VERY LOW INCOME	28300	32300	36350	40400	43650	46850	50100	53350
	LOW-INCOME	43850	50100	56400	62650	67650	72650	77650	82700
rockton, MA PMSA									
FY 2003 MFI: 70300	30% OF MEDIAN	14750	16850	19000	21100	22800	24450	26150	27850
	VERY LOW INCOME	24600	28100	31650	35150	37950	40750	43600	46400
	LOW-INCOME	39350	45000	50600	56250	60750	65250	69750	74250
itchburg--Leominster, MA PMSA									
FY 2003 MFI: 62100	30% OF MEDIAN	13050	14900	16750	18650	20100	21600	23100	24600
	VERY LOW INCOME	21750	24850	27950	31050	33550	36000	38500	41000
	LOW-INCOME	34800	39750	44700	49700	53650	57650	61600	65600
awrence, MA--NH PMSA									
FY 2003 MFI: 74300	30% OF MEDIAN	15600	17850	20050	22300	24050	25850	27650	29400
	VERY LOW INCOME	26000	29700	33450	37150	40100	43100	46050	49050
	LOW-INCOME	39550	45200	50850	56500	61000	65550	70050	74600
owell, MA--NH PMSA									
FY 2003 MFI: 79700	30% OF MEDIAN	16750	19150	21500	23900	25800	27750	29650	31550
	VERY LOW INCOME	27900	31900	35850	39850	43050	46250	49400	52600
	LOW-INCOME	39550	45200	50850	56500	61000	65550	70050	74600
ew Bedford, MA PMSA									
FY 2003 MFI: 52700	30% OF MEDIAN	12650	14450	16300	18100	19550	21000	22450	23900
	VERY LOW INCOME	21100	24100	27150	30150	32550	34950	37400	39800
	LOW-INCOME	33750	38600	43400	48250	52100	55950	59800	63700
ittsfield, MA MSA									
FY 2003 MFI: 56000	30% OF MEDIAN	12650	14450	16300	18100	19550	21000	22450	23900
	VERY LOW INCOME	21100	24100	27150	30150	32550	34950	37400	39800
	LOW-INCOME	33750	38600	43400	48250	52100	55950	59800	63700
rovidence--Fall River--Warwick, RI--MA MSA									
FY 2003 MFI: 58400	30% OF MEDIAN	14150	16150	18150	20200	21800	23400	25050	26650
	VERY LOW INCOME	23550	26900	30300	33650	36350	39050	41750	44400
	LOW-INCOME	37700	43050	48450	53850	58150	62450	66750	71050
pringfield, MA MSA									
FY 2003 MFI: 56800	30% OF MEDIAN	12650	14450	16300	18100	19550	21000	22450	23900
	VERY LOW INCOME	21100	24100	27150	30150	32550	34950	37400	39800
	LOW-INCOME	33750	38600	43400	48250	52100	55950	59800	63700
orcester, MA--CT PMSA									
FY 2003 MFI: 68000	30% OF MEDIAN	14300	16300	18350	20400	22050	23650	25300	26950
	VERY LOW INCOME	23800	27200	30600	34000	36700	39450	42150	44900
	LOW-INCOME	38100	43500	48950	54400	58750	63100	67450	71800
arnstable County									
FY 2003 MFI: 58600	30% OF MEDIAN	12650	14450	16300	18100	19550	21000	22450	23900
	VERY LOW INCOME	21100	24100	27150	30150	32550	34950	37400	39800
	LOW-INCOME	33750	38600	43400	48250	52100	55950	59800	63700

Diane W. Bartlett
200 Franklin Street
Duxbury, MA 02332
781-834-9579

February 17, 2003

His Excellency Governor Mitt Romney
State House
Boston, MA

Dear Governor Romney:

I applaud your work on behalf of streamlining government and making it more accountable.

I know you face tremendous pressure to resolve the budget crisis we face as a State. I have every confidence you can turn things around, given time.

I am writing to you to request that a "Task Force" be developed to address Affordable Housing.

I have been working on this issue at the local level for the last two years and can express complete frustration with the process. It is cumbersome, conflicted and political.

There needs to be a streamlined process whereby a community can turn to one agency and get clear, concise directives on how to proceed in building affordable housing.

There should be one deed rider that sets forth the terms of agreement that is acceptable to the state and not subject to the whims of lawyers.

There should be one funding source for technical assistance that is straightforward with clearly defined guidelines on what will be funded without political interference.

The communities should be able to access on a website, which contains all the acceptable deed riders for the state relative to historic preservation, affordable housing and conservation restrictions. Towns should not have to face sending deed restrictions for approval and then find out they are now not acceptable, when two or three years previous they were accepted. This cost the towns thousands of dollars for lawyers and volunteers to rewrite the deed restrictions and resubmit. As one Town Manager said to me the other day, "the state should not make it this difficult to file these restrictions". We need your help in solving this dilemma.

It seems one agency will tell you one thing. You attempt to follow that directive and the next agency will reverse it. There is no need for this type of confusion to reign. Affordable Housing could happen if the agencies were consolidated under one roof with one set of rules that apply to all towns across that the state, with one director giving clear, concise information to their staff and then the towns.

I have given two years of my time freely for the issue of affordable housing. We have made microscopic movement because of the conflicting directives. Confusion reigns. It is disgusting to say the least.

I beseech you to seriously consider developing a Task Force to develop one set of rules for all communities with all the necessary supporting documents, legally approved by the state lawyers, under one agency with one director.

The agency should have all funding capability, one set of legal documents for long term ground leases, etc. one legal document for deed restrictions that you will accept, and any other legal documents required to move forward with building affordable housing on land in any given community, whether purchased with CPA Funds or existing land. Housing Authorities should be able to move forward with these projects with a clear rules that are not in conflict with six other agencies or laws.

I believe if this could happen, many of the problems with affordable housing would go away. Right now it is a nightmare to deal with and something should be done to stop the conflicting information and lack of access to the deeds and other documents needed. One website with this information on it would solve the problems for the communities to get what they need without spending a fortune on lawyers, chasing around calling any number of people and generally being given the round around.

I thank you for your time in reading this letter and sincerely ask you to consider solving this problem once and for all. I understand that Douglas Foy is a tremendous asset to our state and I hope that something positive can happen to resolve this under your leadership and Mr. Foy's.

The politics and the conflicts with each agency are costing the taxpayers millions of dollars each year in the Various agencies. We need to streamline and execute a clear set of rules and regulations that make sense to the average layman working on behalf of their community.

Very truly yours,

Diane W. Bartlett
Active Community Member

Genevieve Davis
302 Summer Street
Norwell, MA 02061

March 18, 2003

Mr. Douglas Foy
Office of the Governor
State House
Room 360
Boston, MA 02133

Dear Mr. Foy:

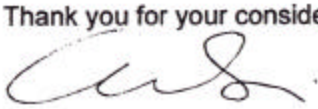
I have been examining Chapter 40(B) because it affects me. That examination has made me realize that the law causes a dissension that takes the focus away from the need to create affordable housing.

Towns are arguing against the rate of growth caused by the 3 market value homes to every affordable unit built. A large part of the problem disappears if a plan is devised that eliminates the extra housing.

With that in mind I have developed a plan that I believe will answer the question for everyone. It is a plan that I have been forwarding to various groups with the hope that it will be adopted by them and thereby make its way to your attention.

I decided that I should include you as one of the groups to get your attention. I hope the enclosed plan can help clear the muddied waters of this path to affordable housing.

Thank you for your consideration.



Genevieve Davis

Genevieve Davis
302 Summer Street
Norwell, MA 02061
781-544-1281

Affordable Housing Plan for Communities

March 13, 2003

The Objective: Affordable Housing
Current Efforts: Chapter 40(B) Development
Problems: Rate of growth allowed through Chapter 40(B)
Solution: Develop Affordable Housing without excessive rate of Growth.

Affordable housing is almost non-existent in Massachusetts. Chapter 40(B) is an effort to address this problem. It does so by allowing developers to build 3 market value houses to every 1 affordable house until a town reaches a quota of 10% affordable housing units.

This development is allowed in dense housing clusters that can be built over a short period of time. Such a focused development creates a very rapid rate of growth. The question then becomes the ability of a small town to resolve the issues associated with the speed of this growth.

The town of Norwell is an example. According to the state formula, it needs 225 more affordable units. This means a total growth of 900 homes when the market value piece is included. This is a 28% increase that occurs rapidly because of the density of the proposed sites.

If Norwell only had the affordable units to provide services to, the increase would be 225 units or 7%, a more manageable figure.

One approach to manageable growth would be the development of a plan that eliminates the growth not associated with the affordable units.

I believe the following plan could address the problem. It requires towns to set aside land for affordable homes that will remain affordable and it requires a tax on all new development for a fund to help sustain the program.

Genevieve Davis
Affordable Housing Plan con't.

NEW HOMES

1. Towns would make available town owned land that will be set aside permanently as affordable housing lots. The ownership of this land would always remain with the town.
2. A qualified family can build a house that fulfills the definition of affordable on one of these lots. The family owns the building, not the land. The family must maintain this property but the building cannot be expanded since it must remain within the definition of affordable.
3. When the family decides to sell the home it can realize a gain equal to the rate of increase realized within the industry over the period of ownership. A new family that qualifies for affordable housing will pay the affordable rate and the gain will be paid for by the fund established by a tax on new development.

EXISTING HOMES

1. Homes within a town that are buildings defined as affordable, but the land value drives the cost beyond reach, will be purchased by a combination of the town and the new owner. The town will buy the land with the fund established by a tax on new development and the new owner will buy the structure. This new addition to the affordable housing stock within a town will follow the same quidelines established for new structures; the town permanently owns the land and the buildings can be sold in the same manner as the new structures.

I believe that the advantage of this plan is the ability to reduce the strain on community services while providing a needed stock of affordable units. It also insures a permanent stock of affordable homes.

I would encourage a moratorium on Chapter 40(B) until this plan, or any other that contains the rate of growth, can be developed.

2003 4:13PM HP LASERJET 3330

John J. Decoulos

Registered Professional Engineer
Professional Land Surveyor

Danvers Industrial Park
3 Electronics Avenue
Danvers, MA 01923
978-777-6390

To: Douglas Foy - 4 Pages

March 4, 2003

Governor Mitt Romney
State House
Boston, MA

Dear Governor Romney,

Congratulations to setting up a task force to address the issues of Chapter 40B. This letter follows up my previous letter to you regarding the problems with local control and that 40B is working as it was intended and should not be changed.

I hope the task force looks into the reason why 40B developments have become prevalent in the last 2 years..... the answer is very simple. The more restrictive local zoning, health and conservation regulations have put a stranglehold on development of new housing. A residential subdivision used to take about 12 months to get permitted. Now you are fortunate if you obtain the necessary permits in five years due to the maze of local regulations imposed by local communities. Home builders have gone to 40B as a last resort despite the fact that 25 percent of the units must be sold at affordable prices.

As an example, I have enclosed a list of the more restrictive regulations imposed by the Town of Rowley in the last few years. Lot sizes have been increased for no valid safety reasons and this keeps driving prices up while local Board of Health regulations have been restricted having no scientific basis. As I stated in my previous letter, local control of 40B projects is a formula for less housing. 40B is working as it was intended and incentives should be provided to communities to increase their affordable housing stock such as larger allowances for schools and infrastructure and penalize those communities that lag.

Much has been said about the greed of developers to circumvent local bylaws but virtually nothing has been said about the complexity of local regulations that make land development a very lengthy and expensive project. Ultimately, these complex regulations drive prices up to the point where the average person can no longer buy a home in the town where they grew up.

A recent suggestion that would regionalize the percentage requirements would invite gerrymandering of the districts. Each community must be held accountable for its share of affordable housing. Also, a system of transferrable development rights would result in a bureaucratic quagmire that would benefit the more affluent communities.

Very truly yours,

John J. Decoulos

JJD/sc
enc.
cc: J. Gumble
D. Foy

REGULATION AND ZONING RESTRICTIONS IMPOSED BY THE

TOWN OF ROWLEY

Increased lot frontage from 125 feet to 150 feet in 1999
Increased lot area from 40,000 to 60,000 square feet in 1999
Passed Open Space Residential Development By Law: in 1999, 2002
60 percent of area must be dedicated to open space
50 percent of wetlands allowed for open space area computation
steep slopes not allowed for open space area computation
Drainage in subdivisions controlled by Stormwater Guidelines (not regulations)
Growth control by law allows only 24 total new dwellings per year in 2002
Conventional subdivision allows only 4 dwellings per year in 2002
it is economically unfeasible to construct subdivision with these limits
Open Space Residential Development allows 10 dwellings per year in 2002

Board of Health Regulations
30' setback from property lines, Title 5 allows 10'
75' between adjacent leaching areas, Title 5 allows 20'
Conservation commission approval needed for percolation testing
only 4 lots allowed to be tested per applicant
a 20 lot subdivision may take up to 5 years for testing alone
100' to wetlands, Title 5 allows 50'
design flow rate: 75 gallons per day per bedroom, Title 5 allows 55
No impervious barriers allowed, Title 5 allows impervious barriers
pump systems must be pressure dozed; not required in Title 5.

As if the above were not enough, here is what in on the horizon for the next Town Meeting:

Lot area to be increased from 60,000 to 80,000 square feet; lot frontage to be increased from 150' to 200' for conventional subdivisions only.

Conservation Commission to propose local conservation by laws among which will prohibit building in a portion of the 100 foot buffer zone that the state currently allows.

Town of Wilmington
40B Count
Submitted by Lynn Duncan, AICP, Director of Planning & Conservation

Problem: For communities such as Wilmington with a population of approximately 21,000, it is very difficult to meet the 10% goal when only a percentage of the homeownership units count.

Recommendation: All units in a 40B development should count. Rationale: All units are receiving the benefit of a zoning waiver(s).

I. TABLE OF AFFORDABLE HOUSING DEVELOPMENTS

	Ownership	Rental	Total Dev. Units	Total 40B units	2000 Census Units	% 40B units
Avalon Oaks		204	204	204		
Avalon Oaks West		120	120	120		
Avalon/Denault	(LIP) 7		7	3		
Buckingham Estates	24		24	6		
Shawsheen Commons	220		220	66		
Silverhurst Avenue	(LIP) 2		2	2		
Chapter 705		12	12	12		
Deming Way		72	72	72		
Community residence		1	1	1		
CDBG Housing rehabilitation projects	26		26	26		
TOTAL	**279**	**409**	**688**		**7,141**	**7.2%**
Pending						
Regency Place		120	120	120		
Whispering Pines	48		48	12		
TOTAL	**327**	**529**	**856**	**644**	**7,141**	**9.0%**

II. TABLE – REACHING 10%

TO REACH 10%	40B units	Total development units	Census	% 40B units
a) Ownership OR	70	280		10%
b) Rental	70	120*		10%
COUNTING ALL 40B DEV. UNITS EXISTING TODAY		**852**	**7,141****	**11.9%**

*Based on discussion with developers, it is unlikely a developer would propose a rental development of less than 120 units.

** It is important to note that while 40B homeownership developments add 25% to the affordable housing count, they also add additional market rate units to the total of year round units, thereby increasing the number of affordable units required to reach the 10% goal. The net gain of affordable units is, in reality, less than the 25%.

Dear Editor,

Although a member of the ZBA, I am prevented from participating in the hearings on the 40B affordable home project on Adams Road, as I have not been a member from the beginning of the hearings. Instead I have exercised my right as a citizen to participate and I have attended almost all such hearings and have done a lot of research and have raised many issues regarding this particular project. The hearings are now closed and citizens and applicant alike are prohibited from additional input to the board, for any reason.

Among those issues is the size of the homes being proposed as "affordable" homes. These homes are 2500 SF in size and will sell for $153,000 to median income families. The market rate homes, identical in size, will sell for $415,000. In Grafton, 93.4% of all the homes are less than 2500sf in size. Obviously, most of the "McMansions" are those over 2500 sf and represent only a tiny proportion of the "normal housing needs" of Graftonites.

The applicant, Mr. Hingorani, who has two lawsuits pending against the Town involving his subdivision proposals, had stated, "The affordable homes have to be the same on the outside, and therefore must be the same design and size."

Because the affordable homes are oversized, more market rate homes must be built to make up the subsidy of over $100,000 per home on a cost basis.

A top rated 40B lawyer in the State, at the recent statewide affordable housing conference, indicated that the affordable homes only "have to look the same from the street, they don't have to be identical in size". For example, a 1600 sf "block" could have a 900 sf rear addition and still look the same as a 1600sf house. The ZBA members have failed, in spite of citizens pointing this out, to rebut the applicant's erroneous statement and his oversized submission. I have submitted several reiterations of a chart, which shows the relationship between the cost of homes built, and the sales of those homes. This chart shows the "breakeven" point as well as the percentage of profit for homes and clearly shows that, using a reduced size affordable home the applicant can build 40 homes with a 9.2% return.

Instead, the applicant has selected 2 designs from a "catalog" and used those inappropriate design submissions for both affordable and market rate.

At a recent meeting of the ZBA, one member was at a loss to justify reduction in the number of homes being built. I would contend that allowing such oversize "affordable homes" is one reason driving the size of the project and it's accompanying impacts on the adjacent Miscoe Brook and the accompanying Hennessey property, bought by the Town several years ago at over $2,000,000.

I support the ZBA but am saddened that, with a deadline approaching, they do not have time to adequately study carefully researched citizen input before issuing a decision that will seriously affect that portion of Grafton which has, until now, remained fairly well protected.

The Walnut Woods fiasco, which has already caused sediment damage to the Miscoe, is only a smaller example of these mistakes in approving Hingorani's horrific handiwork.

Roger Hohman

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JACKIE A. COWIN

TO: MEMBERS OF THE GOVERNOR'S TASK FORCE ON C. 40B
FROM: JASON R. TALERMAN, ESQ.
DATE: APRIL 14, 2003

Dear Task Force Members:

As a land-use and environmental attorney at Kopelman and Paige, a firm that serves as Town Counsel to a third of the cities and towns in Massachusetts, I have had an opportunity to represent a variety of communities on a variety of projects. In the last two years a significant portion of my practice has been devoted to assisting municipalities with c. 40B projects. From the Berkshires to Martha's Vineyard, each project that I have worked on has presented unique challenges. And while not all of the projects have been resisted by Towns, each has revealed a particular issue that may warrant statutory a regulatory revision. On behalf of the Town of Norton and with the input and support of many other client communities, I drafted a comprehensive re-write of c. 40B, § 20-23 (See House Bill # 794). Many of the concerns listed below reflect provisions in the Bill.

What follows is a brief synopsis of each of the projects that I have worked on in the last two years (I have withhold the name of the community in order to ensure that pending cases are not prejudiced). The following list provides a realistic sense of the variety of municipal concerns while, at the same time, dispelling some myths that have drawn unwarranted attention during the 40B controversy. Chief among these myths is that typical 40B applications are submitted as a direct result of so-called snob zoning.

1. 95 units proposed – 72 units approved

- Not Snob Zoning – Zoning is reasonable and property could have supported profitable conventional development 40B project more profitable;
- Extra density because developer overpaid for property;
- Developer made threats of HAC appeal at first hearing;
- ZBA did excellent job of negotiating but Planning Board would be more apt.

2. 79 units proposed – project denied

- Not Snob Zoning – property not developable on large scale due to presence of well on one portion of site and access from only one point (reasonable cul-de-sac length limitation);
- Project immediately adjacent to runway of active Air Force Base (24 hour jet operations) – proposed houses within federally regulated noise and crash zones, within which no residential use is recommended – if project subsidized by federal funds, HUD regulations would prohibit development – impacts from base exacerbated by homeland security activities;
- MHFA site eligibility review fails to reveal and/or address impacts posed by Air Force Base (40B regs. require site investigation) – ZBA left to undertake analysis;
- Applicant purchases property (40 acres) for $300,000.00 but in calculation of profit (40B allows reasonable return on investment) cites land acquisition cost of $1,200,000.00 – inflated purchase price would result in excessive profit; MHFA fails to discover and/or address discrepancy during due diligence (40B regulations require financial review) – ZBA left to undertake analysis;
- Applicant refuses to consider ZBA and MHFA recommendation to cluster project away from air force base;
- Lengthy/complex legal and factual proceedings at backlogged HAC would be more expediently handled at Superior/Land Court (especially given likelihood of subsequent appeal) – unnecessary drain on Town's and developer's (and State's) resources.

3. 28 units proposed – 24 units approved

- Not Snob Zoning – 40B necessary because developer subdivided property from larger lot, leaving extremely narrow and long lot that required waiver of moderate dimensional requirements and standard planning board limitation on cul-de-sac length.
- Town/ZBA enthusiastic about affordable housing near major route.

4. 60 units proposed

- Not snob zoning – developer seeking to extend scope of c. 40B to develop transitional housing/shelter housing within industrial park.

5. 90 units proposed

- Not Snob Zoning – Under conventional zoning, property could be developed conventionally but more profitable under c. 40B;
- Aggressive and confrontational developer;
- Building envelopes wedged into marginal upland on site that is predominantly wetland – entire site within 100-year floodplain;
- NEF project – virtually no due diligence by member bank – ZBA left to undertake all analysis.

6. 50 units proposed

- Not snob zoning – Dimensionally reasonable zoning but oddly shaped lot with significant wetlands prevents development conventionally;
- Developer offers to forego 40B if Town passes cluster-zone by-law;
- Property not near major routes or mass-transit but is in the rural area of town

7. 56 units proposed – project denied

- Not snob zoning – prior recorded land-use restrictions benefiting other property prevents conventional development – developer seeks to extend c.40B to waive restriction
- Project denied under DHCD/HAC regulations – interpretation and legality of regulations at issue;
- Present appeals process not suitable for complex appeals – hinders rather than facilitates process (for both sides) – Superior/Land Court more appropriate forum.

8. 32 units proposed – 32 units granted

- Not Snob Zoning – Cold be developed conventionally but narrow and single access lot would not support many lots conventionally (reasonable cul-de-sac limitation) - more profitable via 40B – developer specializes in 40B
- Property under power lines but near major route.

9. 270 units proposed – project denied

- Not Snob Zoning – property in sensitive area between two outstanding water resources and within the Town's legitimate aquifer protection district – single access road requires lengthy cul-de-sac (4000 feet) in violation of planning board regulation
- Development team with no residential development experience and numerous civil and criminal legal actions pending against them;
- Developer completely non-compliant with reasonable requests for more information – threatens HAC appeal throughout process and then appeals to HAC before hearings terminated;
- Sewer/Conventional septic not possible – developer proposes unprecedented and experimental system;
- Applicant purchases property for under $300,000.00 but in calculation of profit (40B allows reasonable return on investment) cites land acquisition cost of more than $3,000,000.00 – inflated purchase price would result in excessive profit;
- NEF project – virtually no due diligence by member bank;
- Project not near major routes or mass-transit – support roads not sufficient to handle excessive traffic;
- Legitimate and unforeseeable impacts to school system;
- Lengthy/complex legal and factual proceedings at backlogged HAC would be more expediently handled at Superior/Land Court (especially given likelihood of

subsequent appeal) – unnecessary drain on Town's and developer's (and State's) resources

10. 20 units proposed – application denied

- Not Snob Zoning – 30 of 40 acres are wetland - only feasible means of access through sensitive wetland – 40B needed to create miniature lots on scattered upland;
- Developer non-compliant with reasonable requests for additional information, including financial information – non-compliance more difficult for ZBA because project subsidized by NEF bank – virtually no due diligence during site eligibility process;
- Base land acquisition cost inflated (see above) – would result in windfall to developer;
- Developer has history of not fully completing subdivisions in Town;
- Water supply an issue.

11. 60 units proposed

- Not Snob Zoning – Development proposed on one of Town's last remaining vacant parcels in appropriately located business district;
- Despite loss of business district parcel, parties negotiating in good faith

12. 24 units proposed – project denied

- Not snob zoning – Lot was divided off from other parcels privately – awkward shape and location impossible to develop conventionally under almost any reasonable zoning scheme;
- Property is landlocked – no legal means of access to any roadway – lack of jurisdiction (site control);
- Substantial project alteration affecting feasibility but Applicant refuses to obtain qualifying revision to site-eligibility letter

13. 43 units proposed – 43 units granted

- Not snob zoning – Parcel located with industrially zoned area immediately adjacent to industrial park;
- Parties negotiate approval in good faith

14. 84 units proposed – 75 units granted

- Not snob zoning – developer seeking higher density and higher profit via 40B;
- Developer highly aggressive and confrontational during entire hearing;
- Presence of wetlands and endangered species;
- Substantial portion of site within floodplain;
- Design of road system would hinder access by fire equipment;

- MHFA issues site-eligibility letter without evidence of site control or finding of feasibility (as required by regulations) – developer (and MHFA) refuse to provide necessary information to make such findings – too much burden on ZBA

15. 40 units proposed

- Not snob zoning – conventional development possible but 40B more profitable;
- Developer possesses no 40B experience – project too dense and awkwardly configured;
- Profit calculation reveals excessive windfall – Applicant willing to reduce scope of project – ZBA compelled to redesign project for Applicant – nevertheless, good faith negotiations are ensuing.

16. 14 units proposed

- Not snob zoning – property in the middle of commercial district - 40B sought to maximize profit on expensive parcel (expensive community - commercial uses less profitable);
- Town supportive of project, notwithstanding extremely dense configuration – good faith negotiations ensuing.

17. 80 units proposed – 80 units granted

- Not snob zoning – LIP project awarding high density on awkwardly configured project;
- Notwithstanding prior agreements with Town, developer appeals to HAC to eradicate certain conditions – settlement in Town's favor.

18. 22 units proposed

- Not Snob Zoning – lot is subject of former approved subdivision and could be profitable conventionally – more profitable via 40B;
- Relatively small parcel surrounded on all sides by established older residences – property is in a topographical depression, hindering stormwater management.

19. 39 units proposed

- Not Snob Zoning – notwithstanding proposed waiver of mixed use requirement (retail/commercial on first floor), project generally complies with master plan of Town (i.e. higher density near commuter rail station).
- Inflated acquisition cost (see above) used to justify bigger buildings and higher density – Negotiations for reduction of scope of project to ensue

20. 45 units proposed

- Not snob zoning – project proposed on old left-over lot with one narrow strip of access supporting all units (in violation of cul-de-sac limitation and hindering access by emergency vehicles);
- Violation of regulations by NEF bank – developer and bank unwilling to cure;
- Property immediately adjacent to Town water supply, effect of run-off is feared.

21. 80 units proposed – 80 units granted

- Not snob zoning – site is appropriate for 40B – more profit with 40B than conventional development;
- Developer compliant and friendly – parties negotiate permit in good faith

22. 102 units proposed – 98 units granted – proposed modification pending

- Not snob zoning – property could be subject of profitable development conventionally – more profitable via 40B;
- Project requires complete razing of trees on side of small scenic mountain;
- Substantial traffic concerns – ZBA capitulates to avoid lengthy HAC proceeding.

23. 12 units proposed – 12 units granted

- Not snob zoning - developer willing to do conventional development but 40B more profitable;
- Appropriate site for affordable housing – near major routes and town center
- parties negotiate in good faith – developer offers extra unit of affordable housing

24. 100 units proposed

- Not Snob Zoning – Sizable (36 lot) subdivision approved but poor soils makes on-site drainage and sewerage/septic impossible;
- Developer seeks to extend scope of 40B to overcome sewer moratorium and to obtain permission to drain stormwater to town-owned land – developer will back off 40B threat if Town provides sewer and drainage.

25. 79 units proposed – project denied

- Project denied when financial backer withdraws support, leaving inexperienced developer with insufficient resources;
- Developer uses 40B application and HAC appeal to compel town to pass zoning amendment to allow 36 unit cluster project with no affordable housing component.

KOPELMAN AND PAIGE, P.C.

26. Modification of 40B permit to propose commercial uses

- Project denied – no housing proposed – just nonconforming commercial use – HAC supports denial based on SJC case

27. 24 units proposed

- Not snob zoning – property is in viable and active industrial district;
- 24 units on 3 acres, surrounded by wetlands w/out any feasible drainage system;
- Developer seeking to extend scope of 40B to compel inter-municipal water extension;
- Development on property affects archeological site.

28. 5 units proposed – project denied

- Not snob zoning – physical limitations of property preclude conventional development;
- Applicant does not possess legal rights (site control) over proposed access road – only other access is on 18° slope on busy road.

29. 52 units proposed – 52 units granted

- Not snob zoning – appropriate site – 40B used to increase density
- Project density overburdens site, requires massive filling and cutting with 20' high retaining walls;
- Inadequate roadway configuration, hindering emergency vehicle access
- No attention to detail on housing design – "barracks" style

30. 24 units proposed

- Not snob zoning – project proposed on old left-over lot with one narrow strip of access supporting all units (in violation of cul-de-sac limitation and hindering access by emergency vehicles);
- Proposed construction less than 20 feet from existing structures on each side, including historical structure;
- Applicant purchases property for under $100,000.00 but in calculation of profit (40B allows reasonable return on investment) cites land acquisition cost of $300,000.00 – inflated purchase price would result in excessive profit;
- NEF project – no due diligence by member bank;
- Developer aggressive and confrontational

31. 8 units proposed

- Not snob zoning – 40B used to develop upland portion of 50 acre site, of which 48 acres are wetland;
- Environmental issues ongoing during pending hearing

Town of Duxbury, Massachusetts
Planning Board

Joseph Grady
Acting Planning Director

June 5, 2002

Dear Fellow Planning Board Members,

Duxbury is among the many towns in the Commonwealth being challenged by applications filed under M.G.L. Chapter 40B. This state statute addresses the noble and undisputed need to provide affordable housing in Massachusetts. But, however noble in its goal, the current Chapter 40B statute fails in its attempt to provide affordable housing. In fact, the statute's disregard of local protective bylaws severely jeopardizes the future of our towns. As planning board members, we are committed to planning, protecting and preserving each of our town's futures. The Duxbury Planning Board believes that the only way to ensure our ability to provide these protections is to initiate long overdue revisions to the current M.G.L Chapter 40B statute.

We are among many towns in the Commonwealth facing M.G.L. Chapter 40B Comprehensive permit applications on environmentally sensitive land, land previously deemed unsuitable for development. The Chapter 40B statute allows developers to override and disregard local planning and zoning controls as well as adopted Comprehensive Plans. The Chapter 40B statute allows extremely high-density development in return for a paltry number of affordable units. Local communities are left to deal in perpetuity with high-density development on undevelopable or marginal land. As planning board members we must address this question: How can we plan for our town's future if the future is out of our town's control?

We invite you to join us to form an alliance of planning boards from towns across the Commonwealth committed to protecting the health, safety, natural resources and the character of our communities. The Duxbury Planning Board proposes amendments to the M.G.L. Chapter 40B Comprehensive Permit Statute that ensure more control for the local level.

Please sign the attached petition and return it to the Duxbury Planning Board. We will submit the proposed revisions to the Massachusetts legislature. Thank you for participating in this historically significant endeavor.

Very truly yours,
The Duxbury Planning Board

04/11/2003 14:17 FAX 005

The undersigned Planning Board Members from towns in the Commonwealth of Massachusetts hereby petition the State of Massachusetts to amend G.L. C. 40B, ss.20-23 Regional Planning as follows:

Section 1. After the last sentence of the definition of "Uneconomic", in G.L. c. 40B, s.20, add the following:

"Notwithstanding the foregoing, no condition or regulation imposed by a board of zoning appeals shall be deemed to render a low or moderate income housing project uneconomic if such condition or regulation: (1) in the opinion of the zoning board of appeals, imposes reasonable limitations concerning the bulk and height of structures, yard sizes, lot areas, setbacks, open space, parking and building coverages; or (2) in the opinion of the zoning board of appeals, operates to prevent the development of a parcel that is physically or environmentally unsuitable for the density of development proposed."

Section 2. Add to the last sentence of the definition of "Consistent with Local Needs" in G.L. c. 40B, s.20, the following:

"or (3) in the imposition of such rules or regulations, as may be varied in whole or in part, in the opinion of the zoning board of appeals, reasonably balances the regional need for low or moderate income housing with a municipality's reasonable limitations concerning the bulk and height of structures, yard sizes, lot areas, setbacks, open space, parking and building coverages; or (4) operates to prevent the development of a parcel that is, in the opinion of the zoning board of appeals, physically or environmentally unsuitable for the density of development proposed."

Your Town _____ County _____ Massachusetts

Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)
Planning Board Member's Signature	Name (Please print)

Please mail to: The Duxbury Planning Board
878 Tremont Street
Duxbury, MA 02332

04/11/2003 14:18 FAX 006

LIST OF PLANNING BOARDS THAT HAVE RETURNED PETITIONS

As of 4/14/03

Total =75

Date returned	Planning Boards	County
6/24/2002	Amesbury	Essex
9/12/2002	Athol	Worcester
7/3/2002	Berkley	Bristol
8/26/2002	Boxford	Essex
6/24/2002	Braintree	Norfolk
8/12/2002	Brimfield	Hampden
10/15/2002	Buckland	Franklin
7/24/2002	Charleton	Worcester
8/16/2002	Chelmsford	Middlesex
7/11/2002	Chilmark	Dukes
7/11/2002	Danvers (ZBA)	Essex
6/20/2002	Dartmouth	Bristol
7/3/2002	Dennis	Barnstable
7/11/2002	Dighton	Bristol
7/24/2002	East Brookfield	Worcester
7/9/2002	Fairhaven	Bristol
7/11/2002	Freetown	Bristol
8/6/2002	Great Barrington	Berkshire
	Groton	Middlesex
8/21/2002	Hadley	Hampshire
7/29/2002	Halifax	Plymouth
8/30/2002	Hamilton	Essex
7/18/2002	Hanson	Plymouth
7/24/2002	Hardwick	Worcester
7/15/2002	Heath	Franklin
	Hinsdale	Berkshire
7/11/2002	Hopkington	Middlesex
7/24/2002	Huntington	Franklin
8/12/2002	Lakeville	Plymouth
7/3/2002	Littleton	Middlesex
8/21/2002	Longmeadow	Hampden
7/9/2002	Lunenburg	Worcester
6/20/2002	Marshfield	Plymouth
6/20/2002	Mashpee	Barnstable
7/15/2002	Maynard	Middlesex
7/24/2002	Medford	Middlesex
8/16/2002	Medway	Norfolk
7/11/2002	Mendon	Worcester
7/24/2002	Monson	Hampden
8/21/2002	Montgomery	Hampden
7/16/2002	Norfolk	Norfolk
7/24/2002	Oakham	Worcester
7/3/2002	Orleans	Barnstable
7/26/2002	Oxford	Worcester
8/30/2002	Palmer	Hampden
7/11/2002	Pembroke	Plymouth

Date returned	Planning Boards	County
8/1/2002	Petersham	Worcester
9/6/2002	Phillipston	Worcester
7/11/2002	Raynham	Bristol
7/24/2002	Rehoboth	Bristol
6/28/2002	Rockland	Plymouth
7/3/2002	Scituate	Plymouth
7/23/2002	Seekonk	Bristol
8/12/2002	Sheffield	Berkshire
8/12/2002	Shutesbury	Franklin
7/11/2002	Somerset	Bristol
7/11/2002	Southwick	Hampden
7/3/2002	Sterling	Ware
9/30/2002	Stow	
7/15/2002	Sunderland	Franklin
8/12/2002	Sutton	Worcester
8/21/2002	Swampscott	Essex
7/24/2002	Taunton	Bristol
7/24/2002	Templeton	
7/24/2002	Tewksbury	Middlesex
6/20/2002	Tisbury	Dukes
8/30/2002	Tyngsborough	Middlesex
7/26/2002	Upton	Worcester
9/16/2002	Uxbridge	Worcester
7/26/2002	Wareham	Plymouth
	Washington	Berkshire
7/15/2002	West Newbury	Essex
8/17/2002	Westford	Middlesex
8/16/2002	Westminister	Worcester
7/24/2002	Winthrop	Suffolk

Thank you, especially to Senator Hedlund and Representatives Hynes and Bradley. Chairman Kimball sends his regrets for not being able to take advantage of your invitation.

I will briefly touch upon the challenges faced by towns like Mansfield and Norton, and what are, I believe, the concerns of the vast majority of towns grappling with the effects of unfettered 40B projects. These are things I would ask you to consider in your deliberations.

However, I wish to preface my remarks with this. I resent the moniker 'anti-snob' legislation. I personally opposed the way 40Bs are forced down the through to towns, but I'll tell you this, I would qualify for consideration for a 40B in my town. Many towns recognize the issue of affordable housing and are trying to reasonably confront to the need. In Mansfield we have created new housing oversight boards; have spent time, energy, and money in competing for grants that facilitate repairs to homes owned by low and moderate income families; and members of the Board of Selectmen have for the past few years been pushing town meeting funding for affordable housing initiatives – a difficult sell in such economic times. Many towns in Southeastern Massachusetts have done the same. I met the gentleman, Bob Kimball, Chairman of the Norton Board of Selectmen, in whose place I speak today in the middle of a rainstorm as he climbed down from the roof of a Habitat for Humanity home. He wore a tool belt and a pouch of nails and carried a hammer in his hand, as he was giving his own time to work on this affordable home on South Worcester Road. Norton is current creating their own affordable housing plan as well.

We worry about 40Bs not because of the NIMBY factor of *affordable housing*, but because of the impacts *an entire project* brings to a town. Remember, typically 75% of such a project is market rate units….. not what is deemed affordable housing. Developers are able to ask whatever the market will bear for these units and, as good businessmen, they do. Given this dynamic, the 40B provisions in a way have a contradictory effect by helping create a raft of expensive, luxury houses, perpetuating the perception of 'snob' communities. We as towns cannot control the cost and the size (in most cases) of the homes contractors build. These are the real drivers of the % of affordable housing. So our citizens suffer as a result of the market as municipal budgets are forced to compensate.

Towns throughout southeastern Massachusetts and other parts of the state have experience up to 35% growth through the last census cycle, growth that in and of itself is a challenge to service in terms of infrastructure, emergency services and education. Thrown into this mix, 40B projects put immediate, almost uncontrollable, stress on water, sewer, transportation, and other municipal services. These are services that many towns need to responsibly manage *not only because they are precious resources*, but also in many instances because the state mandates such. In the instance of Mansfield, strict water conservation and water connection policies were required by the state in order for the town to sink a much needed well to insure the continued flow of potable water to Mansfield residents. *I noted that Mr. Talerman of Kopeland and Page mentions such concerns on March 31.* Large 40B projects threaten not only our intents, but the mandated intentions of the state.

Aside from financial and administrative concerns, let's talk about something that perhaps people don't like to mention – the way 40Bs can change the culture and the appearance of a community. Don't misunderstand. This is not a barb against affordable housing. I am not talking about the financial or the social background of any new resident. Rather, it is an invective against changing the culture of a town through enormous 40Bs, against the size and scope of those 40Bs that tear

down the fabric of a neighborhood not equipped or designed to handle it. That is why we have particular areas zoned for particular sizes and types of projects. Such 40Bs are an artificial and accelerated redistribution of housing stock, some affordable, but most market value or above.

Towns devise master plans for 5 to 10 years out to get not only a better picture of what the town **will** look like and how to manage the uncontrollable, but also what it ***should*** look like and give sane, rational means to get there. Master plans and ensuing zoning regulations aren't arbitrary; they are carefully crafted documents that take months of work by a wide range of people. They attempt to carefully husband resources, such as commercially zoned land, so as to allow for even progression toward the future. Taking commercial land for 40Bs is a double negative, given the lack of services a business usually requires and the tax revenue property and personnel property tax brings in. The onerous nature of the 40B process sets all this hard work aside and disrespects the goals of the community for its residents.

What can be done? Even if the 40B provisions were currently heralded by all camps as great legislation, I would still call for its suspension. We cannot afford it right now.

Local set-asides - Mr. Draisen of the MAPC rightly said last meeting that affordable housing restricted to current residents of the town is not free from problems, the increase in the housing stock and some end will equate into additional burdens on the towns expenses. It is not a zero sum game. The argument of the recent study that additional students here and there with not necessarily impact the number of teachers needed, that there may be an extra seat, is specious. Given the size of 40Bs and the fact that almost every city and town in Massachusetts is laying off teachers in this economy, **there are no extra seats**. School department and its ancillary costs are an almost 70% driver of municipal budgets.

One time reimbursement is whistling past the graveyard. The operating budget as a base increases with increased units and unless these increases can be supported by a predicable and reliable revenue stream, taxes will increase and the elderly and other marginal households will be forced to leave as a result more of the before mentioned 75% of market rate housing built. Again, that's the real rub, the market rate housing.

Circuit breakers - There does exist the notion of circuit breakers in the large project provisions, but the 2% thresholds will still allow major impacts in budgets in this year and the years for the foreseeable future in which $50,000 can make or break a $60mil budget. There is very little margin.

What might work –

Most of what has been proposed and championed by Chairman Kimball and introduced in the House by Representative Coppola. I also note the efforts of Representatives Bradley and Hynes, as well as Senator Hedlund.

A call for limits on profits for 40Bs that might dissuade predatory developers using the 40B provisions as a cover for action and as a Trojan horse.

Increase the % of affordable houses that need to be built to qualify.

Give more weight to the input of the community in question. Consideration should be given at every stage of review and approval of a 40B of the impact on services of the town and factored into every decision.

40B units, especially in rentals, should remain affordable in perpetuity.

Catch those that really use zoning to promote ‘snob-zoning’. Of course, this is subjective.

… and any other less draconian approaches that encourage rather than punish towns to work for affordable housing.

When it comes to the goal of affordable housing, the ends do not always justify the means, especially in the way that the 40B is now being manipulated.

Testimony of Ms. Amy MacNab, Duxbury Planning Board
April 14, 2003

Thank you for inviting my testimony this afternoon.

My name is Amy MacNab and I am a member of the Duxbury Planning Board.

Last year, the Duxbury Planning Board drafted a petition, signed by over 75 other planning boards after just one mailing, seeking a reform of the comprehensive permit statute.

The petition sought statutory reform not because Duxbury or any other city or town are snobs and oppose affordable housing, but rather because the comprehensive permit statute is punitive, regressive and pits affordable housing development against all other municipal needs and concerns.

We demand reform today because we know that progressive states utilize inclusionary zoning, impact fees and other tried and tested tools to build affordable housing.

The petition sought reform and we today publicly demand reform. As a voice for the seventy five towns uniting together to promote changes to the 40B statute, I state to you that development practices under the 40B comprehensive permit simply are unacceptable. The disregard for adopted local protective zoning bylaws, subdivision rules and regulations and for marginal and environmentally sensitive lands is outrageous and archaic.

I respectfully suggest that while the statute is decidedly anti-suburban and anti-rural, it is also the antithesis of planning. As a planning board member who participated in the update of Duxbury's comprehensive plan and more recently our 2-year effort to revise our zoning bylaws, I can't help but feel that all that effort has been wasted given the 40B applications filed in our town. The irony, of course, is that one of our most successful accomplishments is the adoption of a mandatory inclusionary zoning bylaw for all developments greater than 6 dwelling units.

To those that haven't witnessed 40B in action, it is, to coin the phrase from others, anarchy. No local rules apply. No limitations are set. No predictably in the outcome exists.

We should, collectively, be ashamed of ourselves. 40B is an embarrassment to a civilized Commonwealth. It is a 34-year-old statute born from the animosity between cities and towns. It treats all land as if it has an unlimited carrying capacity. It treats all cities and towns, even those

that have achieved the almost unachievable status of "consistent with local need" the same. It pits neighborhood against neighborhood. It has turned a statute into a verb: getting "40Bd" is a common phrase today.

The legislature has an incredible opportunity, an historic opportunity, to put Massachusetts in the lead in the creation of affordable housing. The fact is, statistics prove the point, Massachusetts has produced far fewer affordable housing units in proportion to states such as California or jurisdictions such as Montgomery County, Maryland.

Some say that the paltry number of cities and towns that have achieved the magic 10% quota is evidence of the snobbishness of our communities. I say the fact that so few cities and towns have the magic 10% is indicative of how ineffective the statute remains.

This Committee has perhaps the last, best opportunity to ensure that the next decade of land development produces affordable housing units in a manner that respects the local and regional planning process, acknowledges the fact that cities and towns must plan for and accommodate numerous competing interests and ensure that the basic principles of due process are protected.

It is time to acknowledge that 40B simply is not working. Affordable housing is not being built and local towns are becoming more and more outraged as we feel our voices and very legitimate concerns are simply being ignored, disregarded and ultimately bypassed. It is time to embrace progressive and successful techniques.

I urge this Committee to seize this incredible opportunity to recommend to the Governor and the Legislature the long over due reform of the comprehensive permit law.

Thank you very much.

Respectfully Submitted,

Amy MacNab

April 14, 2003
Governor Mitt Romney Ch 40B Task Force
Department of Housing and Community Development DHCD
One Congress Street
Boston, MA

As a Town of Stoughton Planning Board member, Executive Order 418 Community Development Committee member and Town Meeting Representative (elect), I would like to thank the Task Force for this opportunity.

I have read all the Task Force Meeting Minutes and concur with the stated goals and purpose of the Task Force.

The first thing I must say is that we are *not* opposed to affordable housing. In fact, proposed legislative changes I drafted for State Representatives William Galvin and Louis Kafka, are entirely rooted in making 40B effective in it's goals, while attempting to address local concerns. (Copies previously made available to DHCD Anne Marie Gaertner)

Stoughton *is* an affordable community. MAPC statistics reflect our median sale price is below $175,000 and average annual wages are below $38,000. (Attachment 1) One third of our housing stock are apartments. We have DMR/DMH/Section 8 and HUD approved condos. Numerous students qualify for Title I grants. Nearly half of our housing stock currently remains appraised at less than the affordable limit of $200,000. (The mean assessment is $212,700.)

Stoughton continues to demonstrate it's commitment to housing. During our EO418 Visioning Series; of the 4 key study areas (Natural Resources, Economic Development, Transportation and Housing), we elected to apply nearly 50% of our budget towards the Housing element, and identified creation of an Affordable Housing Policy for DHCD to certify. This was carefully considered in the Planning Board's vote to temporarily place a hold on new 40B's. (Attachment 2)

Stoughton currently has two active 40B applications, with four more in the pipeline. One application, the Goddard Highlands, embodies nearly every aspect of the issues which the Task Force has been debating. In short time, it is not possible to touch on all it's issues. Therefore, one issue, the Initial Comment Period Process will be focused upon.

These are photos of the land upon which Oxford Development wishes to construct 112 housing units, at 5 times the current allowable density; only 28 units will be 'affordable'.

Recent commercial development has proven the significant consequences for existing abutting homeowners. This photo is the rear property line of one abutter who had to construct a new septic system, and install French basement drains, at a cost of approximately $40,000.

Earlier attempts to develop this land failed. The Goddard itself abandoned its plans, in part, due to an Army Corps of Engineers report identifying the lands significant high water table and special flooding characteristics. Just prior to Oxford, another developer

abandoned plans for a conventional 28 lot subdivision, again due to significant environmental concerns. Now, Oxford argues the property can sustain 112 units of housing; while no substantive change has occurred to the character of the land.

These, and other public health and safety issues, such as that the property contains a public water supply, were identified by the Planning Board to EOEA during the MEPA process. (Attachment 3)

Ms. Ellen Roy Herzfelder wrote in the FEIR Certificate citing “concerns about the impacts of the project on the adjacent Goddard Well and on local flooding”...she wrote, ”I expect DEP will closely scrutinize the design of the project’s stormwater management measures”...”I note in particular the importance of protecting the quality of water at the Goddard Well. The proponent should strongly consider redesigning the project layout ...so that roads, drainage structures, utility lines, and housing units are not located in the well’s Zone IIA or immediately adjacent to the well’s Zone I or II.” (Attachment 4)

Oxford contends to our ZBA they do not need to redesign; that these are merely suggestions of the MEPA Certificate process, which 40B trumps.

During the initial "30 Day Comment Period", our Board of Selectmen (BOS) was advised by Town Manager, via Town Counsel, that the response was not in fact statutory, but was only a bank deadline; so the BOS simply responded that the developer did not provide enough information to comment on. (Attachment 5)

This occurred even though the Selectmen had only weeks earlier voted unanimously to engage the Trust for Public Lands (TPL) to negotiate a purchase price with the Goddard on behalf of the town for the property consistent with the Towns Open Space Plan. The TPL offered the Goddard $1,000,000 on behalf of the town for the property. (Attachment 6)

Now, Oxford contends this is irrelevant. The CMR cites this as reason for HAC to uphold a denial, placing the burden of proof on the developer. Supporting documentation was obtained from the EOEA Division of Conservation Services. (Attachment 7) Again, the developer believes 40B trumps the Town.

Other comments were submitted to the bank. A Selectman, commenting as a resident, the Open Space Committee, and other citizens, provided pertinent facts about the property (Attachment 8) which the subsidizing bank apparently ignored.

The Eligibility letter does not mention the Goddard Well (the town's third largest water supply which is on the property), the Army Corps of Engineers report citing the Special Flood Hazard Area, nor the Towns Open Space Plan.

Apparently the bank believed they only had to consider comments submitted by the 'chief elected official', and could ignore all other comments.

Ms. Jane Wallace Gumble DHCD Director was petitioned requesting the Goddard Project Eligibility Letter be declared null and void, due to it's lack of consideration of submitted information. (Attachment 9)

Last June, Oxford applied for eligibility under MassHousing.

The MassHousing notification/30 day comment period letter (Attachment 10) was raised briefly at a BOS meeting on August 27th, and a response issued two days later. (Attachment 11) At that time, the application had now been before the ZBA for over four months.

For apparent lack of substantive comments, MassHousing subsequently extended the comment period issuing a second 30 day comment period letter. (Attachment 12) The BOS did not reply, nor did the ZBA. The only replies on file are from the Planning Board, the Board of Health and the Open Space Committee. (Attachment 13)

Oxford later withdrew their MassHousing application, leaving them with their original NEF letter as their funding source.

So now, the ZBA has a project, which has numerous documented public health issues, public safety issues, environmental impacts, open space issues, still before them. Concurrently, the Conservation Commission denied the applicant's Notice of Intent, partly becasue the DEP is hearing Appeals. (Attachment 14)

Oxford meanwhile threatens the Board at each hearing and working session, that they "expect this to be the last hearing" and that "if you don't grant my waivers, I'll get it at HAC".

This typifies a problem many communities face which is causing such frustration with 40B.

The Project Eligibility process simply did not work during the abundance of NEF applications.

DHCD has since responded with regulatory changes to NEF. Mr. Thomas Gleason, Executive Director of MassHousing, testified at last summers 40B hearings, stating, “Our site approval letters...respond to community concerns such as traffic, public safety, the provision of water and sewer”...”When appropriate, we will deny site approval for development proposals that raise serious local issues”...”It is clear that some of these planned developments should not be built, and we will not finance them.” (Attachment 15)

We applaud Mr. Gleason, however, it now appears that prior NEF Project Eligibility letters will simply remain as is. Attorney Kathleen O'Donnell noted during her presentation at the March 18th Task Force Meeting, "the recent regulatory changes made by the DHCD related to the New England Fund (NEF) are very good, but they have not had an impact at the local level yet since the majority of projects before ZBAs are NEF projects that were submitted prior to the new regulations."

To allow pre-existing, consummately flawed, NEF eligibility letters to stand, which knowingly disregard local concerns, is simply unjust.

This Task Force, which represents the Governor's campaign promise to look *hard* upon, and *fairly* upon 40B, has a responsibility to mandate re-consideration of these prior NEF Projects.

It is no secret that this Task Force has come under considerable public scrutiny of late by those who contend it consists of only one viewpoint. This Task Force, can stand to regain considerable stature, by mandating this re-evaluation. Making this decision would go a long way to quelling this growing sentiment.

Again, I reiterate, we are *not* opposed to affordable housing, just look at our statistics, we are *for* the creation of housing which meets the needs of all the Commonwealth's citizens, while maintaining respect for local concerns of public health, safety and the environment.

Thank you.

Town of Marshfield
Board of Selectmen

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Remarks to the Governor's Task Force on Affordable Housing and Chapter 40B

John J. Clifford, Town Administrator

Good afternoon. My name is John Clifford and I am the Town Administrator for the Town of Marshfield. On behalf of the Marshfield Board of Selectmen and the concerned residents of the community, I would like to thank you for this opportunity to express some of our concerns with Chapter 40B and its impact on local government.

"Chapter 40B" was not part of the daily lexicon of most local officials until approximately 18 months ago. For many of us, the resurrection of the 40B process was a great shock, primarily due to the dramatic differences in the process by which a Comprehensive Permit is granted. The recent increase of 40B proposals has caused confusion and frustration on the part of local officials and residents, and has become one of the most controversial issues in our community.

Congress adopted local zoning control over 80 years ago, in the Standard Zoning Enabling Act. The Subdivision Control Act has been in effect in Massachusetts for over 50 years. The framework for local zoning control, combined with the New England tradition of local home rule, has certainly resulted in a patchwork of zoning regulations that can be frustrating to developers. There is no question that local zoning reform is reactive in nature, and is not always consistent with responsible long-term planning strategy. We, as local officials, understand the shortcomings of the Chapter 40A process, however, the answer to those problems is not, and never has been, Chapter 40B.

As a local official, I would readily acknowledge that the approval process for residential development is cumbersome, however, that process has been developed over the course of decades, primarily by the dozens of citizen volunteers that staff our boards and committees. Changes to zoning bylaws and other local regulations are debated at length by those serving on boards and committees, and many are debated and adopted at our town meeting. Zoning changes, in particular, have a history of vigorous debate at town meeting, requiring a super majority to pass. To summarily discard these regulatory schemes is not a notion easily accepted by those that worked so earnestly over the course of many years to develop them.

For many Marshfield residents, recent 40B proposals served as an introduction to local government. The Beacon Shore proposal, calling for 198 rental units in the Rexhame area of Marshfield, generated a great deal of public interest, given the densely populated nature of that area. Many homes in that area are located on 5000 sq. ft. lots, are over thirty years old, and are of moderate value. There are several multi-unit apartment complexes that were built along the main thoroughfare leading to the project approximately twenty years ago. Several one-bedroom apartments can be rented for less than $850 per month.

The Beacon project was introduced and quickly became a controversial issue. Residents who attended meetings to learn about the proposal were told the following:

- The process that they were about to participate in is governed by Chapter 40B, also known as the "Anti-Snob Zoning" law.

- This proposal would be heard and decided by the Zoning Board of Appeals. That Board will be asked to waive zoning bylaws, Board of Health regulations, Department of Public Works regulations, Conservation Commission regulations, and other local restrictions that may be imposed by public safety officials.

- The Board of Selectmen, Planning Board, Conservation Commission, Board of Health, Board of Public Works, Chief of Police, and Fire Chief would all have the chance offer input on the proposal, however, that input could be partially or totally disregarded by the Zoning Board of Appeals in rendering a decision.

Citizens were given the opportunity to attend hearings and offer testimony, however, the most common concerns offered were related to density of the proposals, traffic, or burden on local infrastructure, especially schools. In the interest of being forthright, the ZBA generally responded to those concerns by informing citizens that those issues are substantively irrelevant to the outcome of the process. In the process of educating the public as to the process, citizens were informed that the ZBA lacks any practical ability to deny the permit, rendering the outcome a foregone conclusion.

The outcome of the 40B process on the local level is incredible frustration for citizens and local officials. At the end of a long and arduous series of local hearings, residents find that those elected or appointed to serve their interest on the local level, including selectmen and other elected officials, are powerless to provide them with the relief they seek. This seriously undermines public confidence in local government.

In Marshfield, we are fortunate to have a very dedicated and able Zoning Board of Appeals. The ZBA is appointed by the Board of Selectmen, and, over the course of many years, has developed an outstanding reputation in town government for acting in the best interest of the community as a whole. Under this regulatory scheme, they may issue a permit with minor conditions, drawing the wrath of residents, or they can deny the permit, which will almost inevitably result in a permit being issued with no concessions to local rule. The volunteers on this board have been subjected to intense public criticism and pressure, primarily because of the flaws in the process that only serve to frustrate the participants.

It is of major concern that the outcome of the Comprehensive Permit process is predetermined. The Zoning Board of Appeals, if it denies a permit, finds that the appellant authority will, in virtually every instance, overrule the decision of the local authority. The sentiment shared by local officials is that the appeals process is illusory; that the Housing Appeals Committee process does not offer an avenue for appeal, and in fact is not even a committee. The entire 40B process, from its initiation at the local level, all the way through the appeals process, is offensive to our notions of due process and accountability of government.

Looking forward, we would respectfully suggest that this is not an issue of rich vs. poor, or urban vs. suburban, and the debate should be focused upon means of attaining the true objective. We would suggest that the battle to provide more affordable housing must be fought on several fronts.

If affordable housing is a goal that the Commonwealth wishes to pursue, then there must be a sustained financial commitment to support it. We are pleased that the Governor has seen fit to commit dollars to those communities that are promoting the creation of affordable housing units. That needs to be a long-term commitment.

Statutory enhancements that should be considered would include inclusionary zoning, which creates opportunities for affordable housing within standard subdivisions. The Commonwealth should also promote transfer development rights, which is a method of encouraging the development of housing in areas that have the appropriate infrastructure.

The Commonwealth should make a commitment to support the creation of affordable housing for our elderly. One factor overlooked in the debate over the lack of affordable housing is the fact that we have an aging population. Seniors, lacking affordable alternatives, are forced to stay in single-family homes. The creation of affordable housing for seniors would create more turnover of affordable single-family homes, increasing the supply and ultimately stabilizing prices. High-density senior housing offers immeasurable

benefits to seniors and is less burdensome on local services. Senior housing projects are generally easier to promote at the local level than other high-density residential developments.

Local regulation of land use has evolved over decades, and, due to the reactive nature of this local control, we are left with a patchwork of regulation in many towns. That patchwork frustrates reasonable growth, yet fails to adequately address legitimate local concerns. Comprehensive state wide and regional zoning reform is necessary, and the efforts of groups like Zoning Reform Working Group, which is comprised of Massachusetts planning officials, should be supported. The Subdivision Control Law has been in effect for several decades and is long overdue for comprehensive review. The challenges that existed when the law passed have clearly changed, and there is a need for more comprehensive land use planning. The Task Force should consider zoning reform as integral to its mission of advancing affordable housing.

The task force should look beyond merely "tweaking" Chapter 40B. By any reasonable measure, the statute has not met its intended goals. Advocates note the creation of 25-30,000 units of affordable housing since its inception, however, that amount pales when compared to the true demand. Over the course of thirty years, very few communities have made any substantive progress toward the ten per cent goal for affordable housing. Given the high rate of growth in many communities, we are actually losing ground in many cases. While the statute was created with the best of intentions, it has resulted in the creation of comparatively minimal truly affordable housing. It features a process that is widely perceived as heavily stacked in favor of the developer, and totally frustrates citizens and local officials. The great backlash against 40B is largely attributable to the lack of balance in the process. The resources, in money and time, spent on going through this process could be far better utilized, and, if there is to be a process, it should be a fair and balanced one.

In Marshfield, local leaders have recognized the need for the creation of affordable housing. We recently created a local housing partnership and have appointed an incredibly talented and motivated group of individuals to serve. Marshfield was among the first communities to adopt the Community Preservation Act, committing hundreds of thousands of dollars to support affordable housing. As I noted earlier, we have hundreds of apartments and converted summer cottages that would meet any reasonable definition of affordable, yet are not counted in our inventory as affordable because of the lack of a deed restriction.

The Town of Marshfield believes strongly in its blue-collar roots. There is a commitment of talent, time and money that has been made to create truly affordable housing in the community. We look to the Commonwealth as a partner in this initiative, and hope that this Task Force will provide the support necessary to allow us meet the challenge.

Again, on behalf of the Town of Marshfield, thank you for this opportunity.

Dear Ms. Gaertner:

Mr. Fred Habib, DHCD kindly returned my call yesterday morning and advised me that the agenda for your meeting on Monday, 4/14.03 between 2:00 and 4:00pm is currently full... that you are hearing from approximately 13 people giving testimony about their individual experiences with the Chapter 40B process and that although your agenda can not currently tolerate additional verbal testimony, that you will enter written testimony into your study and the report of your findings which I understand will be delivered to Governor Mitt Romney by May 30, 2003.

I would ask that you consider very seriously and include in your report to the Governor, the process the residents of the Town of Marblehead have experienced and continue to experience with the Town's Zoning Board of Appeal's review and evaluation of a comprehensive permit project, currently being considered by the ZBA.

The comprehensive permit for the subject project ("Marblehead Highlands") was filed in mid-August, 2002. The site of the proposed development comprises approximately 4.2 acres of land currently and historically accessed via two routes from south Lime Street and Tioga Way. The site is zoned for single-family dwellings on site of at least 10,000 sf. With required roadways we understand that the site, if developed under the requirements of the governing Zoning By-law, could accommodate approximately 12 single family units or, about 3 single family residential units/acre.

The applicant initially proposed a project of 94 units on this parcel of land (*in excess of 22 units per acre*). The applicant's proposal includes the elimination of the routes currently providing access to and egress from the site from the south and proposes a new, single access roadway to the north onto a small, local roadway (Peach Highlands), via the front yard of a single family home fronting on Peach Highlands. Because of restricted sight lines to and from traffic along Peach Highlands, the applicant has now purchased one of the homes on Peach highlands, adjacent to his proposed new, single entry driveway, and will be required to make physical modifications to the property on which that home sits and to the geometry of peach Highlands in order to achieve what even then will be marginally acceptable sight lines from a traffic engineering perspective. The applicant has added that single family home into the scope of the project thereby increasing the total count of proposed new units to be considered under his comprehensive permit application to 95.

Although the ZBA has requested, from the proponent, a current independent appraisal for site of the planned development, the applicant has not provided one. Clearly the ability for the Town's residents and the ZBA to evaluate the applicant's pro forma(s) is made impossible without a fair and current valuation of the property if it were to be developed under it's as-of-right condition.

The ZBA has reviewed the applicant's proforma as the project would be developed with 94 (95) units, they have on numerous occasions explained their inability to be complete in this regard without a current appraisal of the property. The ZBA has neither received an appraisal from the applicant nor have they commissioned one themselves (which would seem to be the way to ensure that the assessment is made independently).

Although there is no external pressure to bring prompt closure to the ZBA's public hearings, even though they have no ability to truly assess whether a reduction in the proposed project density would render the project "uneconomic", the ZBA is attempting to expedite the process, to the anger of the Town's residents, and is in the process of drafting "conditions" under which they would consider approving the project. The ZBA seems to be acting out of fear that they have little or no ability to stand in favor of a such a project but stand inn favor of one with significantly less density. The ZBA has not yet even held public discussion with respect to the issue of Density. While two of the ZBA members have spoken in support of reduction in density, the ZBA has not yet heard from interested residents of the Town, they have rudely asked an attorney attending the most recent hearing, at the request of interested Town residents) to hurry through his questions and recommendations, and has now advised that the ZBA, (at their next scheduled meeting on May 19, 2003) hear only one 1/2-hour (30 minutes) of testimony from residents (in total...not per/resident) so that they can bring quick closure.

The residents are clearly feeling intimidated by requirements of the process being imposed by the ZBA and are fearful that the ZBA will approve this project with minimal reduction in density, any access route the applicant desires, and with any deviation from the underlying dimensional constraints in the Town's zoning by-laws the applicant requests (height, density...parking space size ... with the purpose of having to then appear before the Housing Appeals Committee where, we've been convinced, the applicant's entire project will be approved, under essentially any circumstance, as initially proposed by the applicant.

Here's the interesting twist:
The neighbors abutting this parcel of land support the site's development with residential units of which 25% are affordable; however, there is no rational explanation for a law which requires that such a piece of land, which can be developed with 12 single family residential units under its underlying zoning constraints, must be developed with almost 8 times that allowed density (i.e., 95 units) in order for it to be truly not "uneconomic" to the comprehensive permit applicant.

The process should require that an applicant start with the underlying zoning and then demonstrate how many units must then be *added* to the as-of-right maximum in order to achieve the count of units, with the appropriate percentage of affordable units, which provides the applicant a fair and reasonable profit.

The process should require the financial evaluation of each *additional* unit required in the proposed development, above the density allowed as-of-right...and the density of the project should then be limited these iterative evaluations demonstrate that a fair and reasonable profit will be achieved by the applicant.

The process should *not* allow an applicant to propose a project which hugely exceeds the density which is allowed as-of-right (as in this case in Marblehead, where the proposed density is almost 8 times that allowed as-of-right) requiring the town and its ZBA to then have to determine how to fairly reduce the proposed density, with the underlying fear of "losing it all" at the Housing Appeals Committee if the applicant that avenue as a window of opportunity.

Clearly, a project with an affordable component, would necessarily exceed the density allowed as-of right in order for such a development to be attractive to a residential developer and the neighbors of this project would certainly support an affordable residential development on this parcel which exceeds the as-of-right density; however, the burden of proof should rest with the applicant, to show why and by how much the as-of -right density must be exceeded ...by *adding* to the *allowed* density.

We ask that your report to Governor Romney take this project specifically and the process under which it is being evaluated, under the CH.40B process, into serious question. In the Town of Marblehead, with its 8,746 residential units - there is an average density of approximately 5 units/acre. This project proposes in excess of 22 units per acre.

We would greatly appreciate your guidance in this regard.

Sincerely,

Jan Machnik
15 Peach Highlands
Marblehead, MA 01945
t: 781.631.1039

Fred,

I would like to thank you for extending to me the opportunity to present on Monday afternoon (2-4) to the 40B task force committee you are on. I feel that as a representative from a neighborhood directly affected by two recently approved 40B permits, I can speak candidly to the committee on the 40B process.

I will present to the task force how 40B is doing just the opposite that it was intended to do. The following are some examples:

1) **An existing Process flaw:** The current Ch. 40B actually reduces the number of "affordable" housing units.

Cause – 40B definition of "affordable" does not include what is affordable.

Problem - Current definitions do not include trailer park units. At a recent Selectman's meeting they suggested to a trailer park owner who is adding 26 new units, not to expand with new trailers with the price tag of between $50-80k. Instead they recommended that the new units be constructed using modular homes with foundations that can be considered/counted as affordable housing. The difference would be in increase of a units cost to approximately the $120-150k price range. In essence building <u>less</u> "affordable" units.

Solution – Expand the definition of existing affordable units to include in a town's existing inventory, the available housing that actually meets the affordable threshold of income as calculated under Ch 40B including trailers

Cause – 40B definition of "affordable" again does not include what is affordable.

Problem - Under the affordable housing rental formula a newly approved Ch. 40B apartment expansion will allow for a substantial rental increase above the current rates and still be considered affordable. In essence building less affordable units.

Solution – Expand the definition of existing affordable units to include in a town's existing inventory, the available rental housing that actually meets the affordable threshold of income as calculated under Ch 40B.

Bottom line here - remove the subsidized part of the formula to be used in calculation of existing affordable housing inventory.

2) **An existing Process flaw:** Limited resources prevent anything to happen but the granting of a 40B permit - reducing the actual number of "affordable" housing units.

Problem – Our existing volunteer ZBA lacks the resources/funds available to conduct the necessary due diligence. This lack of resources prevents the board from doing anything but approve any comprehensive permits. This is intentionally done to preventing the town from any exposure to potential litigation costs. Attorney Kathleen O'Donnell [Mr 18 meeting] noted several stress points in the process. "Costs to the developer v. Information needed by the ZBA." The reality is a ZBA is unable to afford anything else but a rubber stamp.

Note: the existing process in my town did allow for the hiring of Attorney Mark Bobrowski. Unfortunately what I observed in this process was Mr. Mark Bobrowski. actually performing the duties of a lobbyist for the developer. It became evident by comments made, that the attorney was not considering the needs of the town for affordable housing. It was also evident that the attorney did not allow for the appropriate review of the Performa to see if it was truly necessary to override local zoning to be profitable.

This flaw in the process is forcing abutters and neighbors of Ch. 40B projects to spend tens of thousands of dollars to protect the character of their community. In fact we expect to see attorney costs in the range of $50-$70,000 to appeal a recent local decision.

Under the false pretense of producing affordable units, developers with an army of lawyers are going from small town to small town actually running over existing zoning laws for their own profit. Developers are smart enough to know they have a better

chance in a small town with a lower per capita income, to get a permit passed then in a more affluent town where people with higher incomes and more disposable income can more likely afford to protect the character of their community. In essence Ch, 40B is building less affordable units in communities that already have them but not in the towns that have trophy homes!

Thank you again for this opportunity.

Sincerely,

Rob Crossley

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November 7, 2002

State Representative William C. Galvin
State Representative Louis L. Kafka
Room 238
State House
Boston, MA 02133-1020

Re: MGL Chapter 40B Request for Proposed Revisions

Dear Representatives Galvin and Kafka:

Thank you for the opportunity to submit ideas and suggestions on how the State's affordable housing law, Ch.40B, could be improved. As has been well documented through many regional news sources, nearly every municipality in the Commonwealth has been affected in some way by the recent explosion in 40B Comprehensive Permit applications.

Possibly the most significant issue regarding 40B, is the way local controls established under Ch40A Zoning, are obviated under 40B. It seems, the local controls of which the Commonwealth's State Charter holds as a fundamental truth of governance, has been stripped absolutely.

What has also been heavily focused upon, is the ability of developers to bypass local requirements in the form of waiver requests. What is very interesting however is, if one reads the statute explicitly, there is absolutely NO mention what-so-ever mandating the provision of waivers. Originally, 40B was only intended to promote permitting process expediancy via one stop shopping, hence the name 'comprehensive' permit. However, over the years, and through the Department of Housing and Community Development's (DHCD) promulgation of the statute via CMR 31, it has drastically changed to become a way for developers to club municipalities with unwelcome results.

The only industries being served by the current use of 40B are real estate developers, housing contractors, attorneys, consultants, and land use and planning educational seminar providers. The very citizens which 40B was meant to provide for are not even part of the equation in the developers proposal. Most 40B proposals are clearly focused on bottom line profit through maximum density development, not on the creation of safe, desirable, affordable housing for low and moderate income applicants.

The focus on changing the affordable housing law in Massachusetts must originate from a focus on the desired results first, then re-focus on the basic processes by which the results can be achieved. When the creation of affordable housing, is conducted in a manner which is truly 'consistent with local and regional needs', which is the established criteria, albeit undefined, of the DHCD Housing Appeals Committee (HAC), then, and only then, will the affordable housing crisis truly begin to be worked on. Until such time,

only the beneficiaries listed above will continue to prosper. It is quite evident that this is the case, as these industries are the ones who lobby our lawmakers stating that the law is fine as it is. We know it is far from fine, and in dire need of revision.

The following itemized suggestions are being set forth for your consideration in filing legislation for the next session. They are further categorized into three focus areas;

- Affordable Housing Creation & Regional Planning
- Roles of the DHCD and the HAC
- Local Municipalities Involvement

I would be pleased to meet with you to discuss this these suggestions further, and would also be willing to testify before any committee or sub-committee if desired.

Affordable Housing Creation & Regional Planning

1. The required minimum percentage of affordable units, in relation to total units, should be increased. Currently only 25% of total proposed units must be made affordable. For a town such as Stoughton, which per DHCD has 6.97% affordable housing units, to meet the 10% goal, at a growth rate of 0.5% per year (as suggested recently by Governor Jane Swift), would require an overall *20 percent increase* in *total* housing. The chart below demonstrates this:

YEAR	***TOTAL HOUSING UNITS***	***ANNUAL CHANGE IN TOTAL HOUSING UNITS****	***ELIGIBLE 40B INVENTORY HOUSING UNITS***	***CHANGE IN ELIGIBLE 40B INVENTORY HOUSING UNITS****	***CH40B INVENTORY %***	***CUMULATIVE CHANGE IN TOTAL HOUSING UNITS***
0	10,429	-	727	-	6.97	
1	10,729	300	802	75	7.47	300
2	11,041	312	880	78	7.97	612
3	11,377	336	964	84	8.47	948
4	11,737	360	1,054	90	8.98	1,308
5	12,121	384	1,150	96	9.47	1,692
6	12,529	408	1,252	102	9.99	2,100

*Based on current CMR which *only* requires a ratio of one affordable Unit for every 4 new housing Units developed under the Statute.

This is certainly inconsistent with recent doctrines, such as Executive Order 418, which prescribes to end suburban sprawl. Therefore, to be effective, the requisite minimum ratio of affordable units to total units should be increased significantly.

2. The State should recognize the inherent tie between a 40B proposal which impacts services i.e., schools, public safety, infrastructure, etc., by providing financial assistance to communities granting permits in relation to the number and type of units created. For example, a large scale multi-unit project, or an age 55 and over project, would certainly require different types of services than a smaller scale, individual homeowner based project. Some formula could be developed to provide the financial means to offset the added cost impacts on a town's tax burden caused by the development.

3. Recent changes in DHCD policy encourages municipalities to develop and submit a housing plan which can be certified by the DHCD. After which, the town can work towards implementation of the plan. This allows a town to establish its own policy for the creation of affordable housing. It further enables a town to plan for development in relation to its master plan, thereby balancing the overall needs of the community relative to open space, transportation, economic development as well as housing. To allow a reasonable amount of time for communities to develop and submit housing plans to DHCD to become certified, a temporary moratorium on 40B applications should be granted for a specified time period, for those communities who commit to the preparation and submission of a housing plan to DHCD by a mutually agreed upon date.

4. The State should re-visit the Community Preservation Act in a way which would entice more towns to adopt it. By increasing the value of the Act, getting voters to adopt the Act, could be made easier. Incentives to towns could include additional funding for specific affordable housing projects. To date, selling the idea of increased property taxes to local homeowners remains difficult, as evidenced by the low number of towns who have adopted the Act. Additional public outreach to communities selling the benefits of the Community Preservation Act could be useful in this regard.

5. The State should meld the goals of regional planning, specifically the reduction of suburban sprawl with urban revitalization, by developing programs which encourage redevelopment of old mill type structures into housing units. Developers typically argue that renovation costs make it uneconomical to renovate older structures. However, these structures usually are situated near town centers, which are typically also the towns hub for transportation and commerce. Rehabilitating these structures into affordable housing units, would assist to reinvigorate many towns urban centers, an explicit regional planning goal.

State Representative William C. Galvin
State Representative Louis L. Kafka
MGL Chapter 40B Proposed Revisions
November 7, 2002
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Roles of the DHCD and the HAC

1. Currently the statute does not specifically mention 'waivers'. HAC has through its hearing process, given developers inherent 'rights' to waivers on the grounds that denial of any waiver would render the project uneconomical. Developers have come to use this as a club against communities, almost challenging them, to "go ahead and deny my permit, I'll get it from the HAC". Developers have requested laundry lists of waivers, including local By-Laws in their entirety, such as Board of Health and Conservation Commission By-Laws. If the HAC is going to maintain its position on the developers 'rights' to waivers, then specific guidelines must be established. The types of allowable waiver requests must be explicitly defined. The burden of proof must be explicitly placed on the applicant, for each waiver request, in the form of a cost vs. benefit analysis demonstrating why the waiver is required relative to project economies. The burden of proof must be explicitly placed on the applicant demonstrating clearly and definitively that the waiver requests, will in no way adversely affect the resource areas or the health and well being of the town's residents.

2. Permit applicants should be required to have their pro-forma validated by an independent third party, experienced in land acquisition, development, construction and marketing costs. A detailed cost breakdown for each element of the project should be required. DHCD should develop a standard format for the pro-forma presentation. This could be developed to include the value gained vs. lost for each itemized waiver request. At present, there is no real mechanism for reviewing specific economic impacts of each waiver request on the overall project.

3. The current requirement that the funding agency notify the affected municipality's chief elected official in soliciting proposal review comments is flawed. The request for review comments precedes the submission of the proposal. Therefore, what comments could be expected? Also, if the chief elected official chooses not to include other town boards, which will certainly have an interest in the project, then again, what comments could be expected? A proposed solution to this would be to notify not only the chief elected official, but also all the affected boards, such as zoning, planning, health, and conservation. A preliminary site plan and short narrative project description should be submitted with the comment request letter. A site visit date should be established for all interested parties, including abutters, such that valid comments are prepared and submitted, prior to issuance of the Project Eligibility Letter.

4. The allowable developers profit margin of 20% is excessive in light of the fact that a privately financed large scale conventional development may yield only between 8% and 10%. Considering the public purpose of 40B, the statute should be revised to limit profit

to 10%. In calculating profit, the base acquisition cost of the property should be limited in such a way to prevent the current practice of developers who artificially inflate the purchase price to skew his pro-forma in a way which inappropriately attempts to substantiate the list of waiver requests.

5. DHCD should mandate that applicants fund all reasonable and deliberate review costs of 40B projects. This should include the use of outside consultants, legal counsel, engineering consultants, etc. and include town overhead administrative expenses. The review process of a

40B permit application is extremely involved and time consuming, it should not cause a drain on the town's finances.

6. The current 10% affordable housing goal should be revised to something more realistic, such as 8%, as an attainable goal for a suburban community. Once suburban and rural communities reach this goal, then the bar could be raised. Currently, many towns feel the 10% goal is virtually unachievable.

7. DHCD uses the US census data as part of the inventory calculation. However, it is well documented that the census data is not always accurate. Also, the DHCD and the US Census Bureau use different definitions of 'housing unit'. As part of the requirement that towns certify their number of 40B eligible housing units, they should also be required to certify the total number of residential housing units per their assessors office. This would be more accurate and eliminate the apples to oranges comparison effect and eliminate challenges to the inventory due to incorrect census data.

8. Towns should be required to certify their housing statistics annually. Specific instructions should be provided to towns as to how to perform the inventory. One problem facing towns is that the list of eligible programs is so lengthy, it is nearly impossible to determine the correct figures. Much information is not even privy to the towns. For example, state agencies such as DMR and DMH do not report through the towns in which their facilities reside; they should be required to report to DHCD with a copy to the town. Homeownership obtained through public subsidy programs such as low interest, no down payment, or loan insurance programs such as HUD, should be reported to DHCD by the agency granting the mortgage, with a copy to the town, when the property transaction is recorded at the Registry of Deeds. Other facilities which dedicate beds to low and moderate income individuals such as nursing homes and elder care assisted living facilities should be allowed to count towards the goal. Section 8 rental voucher users, single room occupancy (SRO) facilities, boarding houses, etc., should all be required to report to DHCD, with a copy to the town.

State Representative William C. Galvin
State Representative Louis L. Kafka
MGL Chapter 40B Proposed Revisions
November 7, 2002
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9. The DHCD should consider market rate home statistics which are within the reach of the stipulated regional income limits, as eligible to count towards the inventory. This could easily be done through the towns assessors office. This could include mobile homes, condominiums, rental units, accessory apartments and single family homes.

10. Private funding sources, such as the New England Fund (NEF), with no public oversight, have caused a significant impact on public policy and on the disposition of undeveloped land in Massachusetts. Only recently has DHCD taken steps to require more stringent review of these funding sources. These changes are welcome and needed. The implementation of these new changes should be watched carefully, to ensure the desired results are achieved.

11. 40B has been used to develop less than marginal land, and local Conservation By-Laws have been trammeled as developers shoehorn maximum density developments onto properties that are not suited to such projects. The mechanism by which a developer 'establishes' that the property is suitable for a conforming subdivision needs to be clearly defined. Prior to the issuance of a Project Eligibility letter to a developer, DHCD should mandate that all other state requirements be met first. For example, currently in Stoughton, a developer is before the ZBA while his mandatory requirement to satisfy the State Department of Environmental Protection and Executive Office of Environmental Affairs have not been fulfilled yet. All parties acknowledge that the very plans which are before the board will likely change following the environmental review process. Town zoning boards are typically volunteers with large caseloads. The resources and efforts required to hear a 40B application are enormous. These boards should not be made to hear cases prematurely, nor be forced to issue decisions before these prerequisites are completely established.

Local Municipalities Involvement

1. Currently the ZBA is the sole board that is tasked with hearing and issuing comprehensive permits. However, other boards, should be required to review the proposal, provide commentary, be represented and have a vote, along with the ZBA. For example, Planning Boards typically oversee subdivision approval, are cognizant of the towns zoning by-laws, and as such, have much input in relation to a comprehensive permit application.

2. Currently, many ZBAs due to their predominant reliance on volunteers, do not have sufficient knowledge or understanding of the statute. This leaves them vulnerable, as they do not understand there are portions of the law which do protect the community. Instead they are barraged by the developer and his attorneys with only the portions of the

law which favor the developer. DHCD needs to perform educational outreach to these boards, and if neccessary, provide representation at the hearing itself, such that misuse of the law due to lack of understanding does not occur. Although the DHCD website does include guidelines for boards, they are very general in content, many boards do not utilize them, nor even know they are available.

3. Communities should be encouraged to identify appropriate sites for proposed affordable housing creation, and then either seek out grant monies to develop the sites themselves, through their housing authority, or, consider engaging in a public/private joint venture with a real estate developer, and property owner, to create the needed housing on the selected site.

4. Communities should be encouraged to adopt inclusionary zoning into thier by-laws which requires an affordable housing component in any new subdivision permit application. The state could make available a draft inclusionary zoning model by-law.

In summary, there are many ways by which the affordable housing crisis in Massachusetts can be effectively managed, without severe adverse impacts upon communities. If done properly, coalitions could be established to effectuate the desired results of Ch40B without usurping the established controls of Ch40A.

If you have any questions regarding any of the aforementioned, please do not hesitate to contact me.

Respectfully submitted,

Mr. David Petersile
Town of Stoughton Planning Board Member
235 Daly Drive Extension
Stoughton, MA 02072

Date: April 9, 2003

To: Mr. Fred Habib, Deputy Director, DHCD

From: Stoughton Concerned Citizens

Subject: Goddard Highlands 40B Process Issues

As discussed, please consider the following items which characterize the' Process Issues' which have been encountered during the past year as associated with one of the Towns 40B applications currently before our Zoning Board.

Note these issues only represent very few of the many issues which have arisen under this particular application, however, it summarizes the general difficulties we believe communities are experiencing with the abundance of 40B applications today, and the way they are presented by the developer and his assemblage of attorneys and consultants.

A) The Affordable Housing Inventory Process:

-Housing count not done for several years, no town employee assigned to do it, had to have two state representatives and one state senator send letters to the Town manager that it must be done. Volunteers did it for seven months and insisted the Town take over. Still not known if inventory review is correct. It does not appear to be understood by the Town that in home ownership 40B developments, only the low-income units count. This does not help increase our affordable housing stock. Town manager sent email to citizens that it was good volunteers were doing the count because there was no one available at this time in local government to do it.

-Town already has an overabundance of affordable housing that is not allowed in the “count” and should be. Of Stoughton’s 9,673 Total Housing Units, 3,188 (one third) are apartment type units. Of these units, hundreds qualify as “HUD approved condos.” These should be allowed in the count. Stoughton has SRO’s, Packard Manse, 4 Judge Rottenburg Centers, 5 DMR homes and hundreds of accessory apartments. These are not all included in the count and should be. Stoughton is not a snobby town that excludes low income residents.

Section 8s and mobile homes should count. Stoughton has at least 100 section 8 vouchers and 30 to 40 mobile homes. We are close to 15% in some of our schools for children qualifying for free and reduced meals. The middle school and some of the elementary schools currently qualify for Title I grants. At the time of the filing, nearly half of our housing stock was appraised at less than the affordable limit of about $200,000 (the mean assessment is $212,700).

We currently are an affordable diverse community, but the 40B law as it stands does not allow Stoughton to show it. Section 8's and mobile homes should be included in the count. These are the towns that are currently doing their share.

The town should have an assigned employee to monitor and certify the accuracy of the count.

B) The initial Comment Period Process:

-"No comment" from the Board of Selectmen in the initial 30 day comment period even though a letter was sent by the same Board of Selectman to the Trust for Public Lands just weeks before to pursue the property and make an offer on behalf of the town for $1,000,000. Property was on Open Space Plan since August of 2000 and the Town was in the middle of pursuing the purchase after a conventional development was denied due to serious environmental issues.

-Not enough information provided by developer to Town to comment on. Town Manager advised from Town Counsel that the 30-day response was not in fact statutory, but was in fact a bank deadline. Not known if this is correct. One Board of Selectman did comment (as a resident) with all the pertinent facts, but the bank apparently ignored this. No information distributed to nor requested from any other town boards

-Site eligibility letter from Rockland Trust per New England Fund does not mention the Goddard Well (the town third most productive public water supply on the property), wetlands, flood plain, and intermittent stream. The Army Corps of Engineers identified a 'Special Flood Hazard Area' within the property. None of these identifiable areas of the property are mentioned by Rockland Trust, even though it is stated they walked the property. Large parts of the land flood and past development has caused water problems and septic system failure in existing homes.

The project eligibility process did not work as it is supposed to and there are no checks in place to assure that it does. A letter was submitted to Ms. Jane Wallace Gumble regarding this issue; specifically requesting the Project Eligibility Letter from Rockland Trust for the Goddard Project be considered null and void due to it's lack of consideration of submitted information. DHCD has since responded that regulatory changes would be made to NEF. However, it appears that prior NEF Project Eligibility letters are to remain. As Attorney Kathleen o'Donnell noted during her presentation at the March 18th Task Force Meeting, "the recent regulatory changes made by the DHCD related to the New England Fund (NEF) are very good, but they have not had an impact at the the local level yet since the majority of projects before ZBAs are NEF projects that were submitted prior to the new regulations."

To knowingly allow pre-existing eligibility letters which are consummately flawed and issued without regard for local concerns is incorrect. This task force must develop a way to enable the re-review of those

prior NEF Project Eligibility Letters. The process to receive those letters, in this case, does not appear to have been followed.

C) ZBA Lack of Knowledge or Understanding of the Law:

-The lack of understanding of the 40B laws by Zoning Boards can allow misuse of the statute by developers. The developers attorneys and consultant only cite those aspects of the law which favors their endeavor. The most frequent abuse is the threat to go the Housing Appeals Committee where developers claim they will get whatever they ask for. In Stoughton, the ZBA has allowed 4 "working sessions" where the public is not allowed to speak. At the last "working session" on March 27, with no attorney nor consultants present, the developer said "If that bylaw isn't waived, there is no reason for any of us to be here." (Stoughton Journal April 4). This was in reference to a bylaw that was not waived for a conventional development on the same property..

"The HAC is very likely to approve the development." said the developer, stating his case in clear terms to the ZBA. (Stoughton Journal April 4).

Zoning Boards are generally volunteers, with little or no legal background. They are overwhelmed with the volume of correspondence associated with a permit filing. In Stoughton, Town Counsel advised our ZBA read aloud for the record all correspondence at each public hearing, however this is no longer being done.

The meetings are not televised and there are no minutes available since September 2002. How is this an open public process?

-Valid questions are coming in from a very knowledgeable public and are not responded to at the ZBA meeting nor at future meetings. Valid points have been ignored. Information is not always sent to attorney prior to meeting to allow proper preparation.

In reviewing the proforma, the consultant needs to review the numbers for the Allowable Acquisition Costs. A prior developer, Simeone, had a signed purchase and sale with the Goddard property for $1,000,000. The Trust for public lands appraised the property at $1,000,000. This developer, Oxford, offered $1,400,000. Allowable Acquisition costs require that the development proforma must reflect a land value based on the lower of the (1) last "arms length transaction(if within 3 years) plus reasonable carrying and /or maintenance costs or (2)if a comprehensive permit is used, value under pre -existing zoning, plus reasonable carrying costs. In no case may allowable acquisition costs exceed appraised value. This is an issue now. Even though it is known to town boards of the Simeone p & s for 1,000,000 (as he was before the town for his prior proposed development), the Zoning Board may not be clear on this and has not given the information to the consultant that is doing the pro-forma.

ZBA is reviewing and discussing waivers at the "working sessions" without the proforma being done. The Developer and his attorney are running the ZBA. The developer is responsible for identifying the economic value associated with each waiver request to substantiate the need for the waiver. This is not understood and not being done.

The Planning Board Land Use Subdivision Regulations, Board of Health By-Laws, Conservation By-Laws, etc. which are being waived are clearly not understood by the board. The decision making party must understand the technical aspects of these decisions.

D: Document Distribution Process issues:

ENF never distributed to Zoning Board even though they are on the distribution list. ZBA never received nor reviewed EIR, DEIR, FEIR. This puts the town at a great disadvantage. Boards have not received information and have not commented unless citizens let them know the information is there. This requires citizens to constantly request copies from town hall of correspondence, sometimes wait for a 10 day request period and pay for the copies. This puts the developer at an advantage if Board of Health, Conservation Commission, Planning Board, and Open Space Committees are not receiving information. The ZBA should be soliciting information. It appears that other boards have no comment when in fact they did not know of the correspondence.

Similar issue with 30 day comment period letter from MassHousing to the Town.

Developer applied to Masshousing when it was possible that NEF was no longer funding.

The first 30 day comment period letter from Masshousing went to the home address of the chairman of the Board of selectmen, not to Town Hall and does not appear to have been distributed to any Town Boards and commissions nor fully discussed at a Board of selectmen meeting. Due to the lack of comment from the town on this project which had been in front of the board for months with several hearings and serious concerns, MassHousing extended the comment period and sent a second set of 30 day comment letters in separate envelopes to all the different Town Boards. This new mail was not distributed most Town Boards. To this day, these second request letters were not responded to by the BOS (meeting minutes have been reviewed). After the fact, the developer withdrew their MassHousing application, but the fact remains that it appears there was not going to be any comment sent to Masshousing about the ongoing process on the Goddard 40B.

It appears that the ZBA was not notified of the potential funding change until months after the application was sent in.

A check needs to be in place to assure all boards and commission are aware of all documentation and correspondance. It should be questioned and a red flag raised when there are no comments from any boards and commissions, especially when a hearing has been going on for seven months.

E)Conservation Commission Issues:

Conservation Commission denied the developers request for a notice of intent on December 19. The denial was sent in late to DEP without all the necessary commissioners signatures, even though they had 3 weeks to prepare it.

After the denial, the Town Engineer, wrote a letter to the ZBA that appeared to agree with the developer instead of backing the Conservation Commissions decision. The Conservation Agent was fired. The public anticipated an appeal and was awaiting this possibility by requesting any incoming documentation, and was incorrectly told there was none. It was then that the Town engineer stated that there may be a pattern of documents being intentionally withheld from the public. The citizens had to be very forceful to find that the developer did in fact file an appeal, and this was not given to the citizens in a timely fashion. The citizens needed this document within a specified time period in case they also wanted to take action on the fact that the denial was not sent in by the necessary date.

The 40B process should be monitored to assure all deadlines are met and procedures followed.

F) Additional Process Issues

The developer has presented the MEPA certificate to the ZBA as proof they have met all the environmental issues associated with the project, when the truth is the MEPA certificate “strongly recommended design changes relative to the well zone protection” to protect the public drinking well recharge of the Goddard Well. (A “strong suggestion” is typically the strongest decision MEPA gives out). The developer claims they do not have to comply with this and other recommendations.

Stoughton third largest producing public drinking supply must be protected.

Documents from developer are often backdated but have a current time stamp. In the hearings these are referred to by their typed date, not the date received.

Not all information is in the file. Exhibits are referred to that are supposed to be in the file that were never sent in. Con Com information that refers to well zone II still has a missing backup reference.

Information should be provided by the developer in a timely fashion. Developers should not be allowed to insist on waiver requests based on documents that are referred to but not provided.

Will not negotiate number of houses. ZBA Consultant said the development is economically viable at 42 units. The developer will not do less that the original 112. There has been no room for negotiating on the developers part. T

Verbal promises of a 55 and older, not in writing, no documented plan changes offered even though numerous requests..

Requesting inappropriate street length that have never been granted in the past. There are different recommendations from public safety officials for the same issue ie: >500' dead ends.

Land is not suitable for development, groundwater is 22" below the surface

Developer refuses to plot existing features: stonewalls, cart paths, trails, relative to the Open Space areas to be granted to the town. No noted public access to Open Space

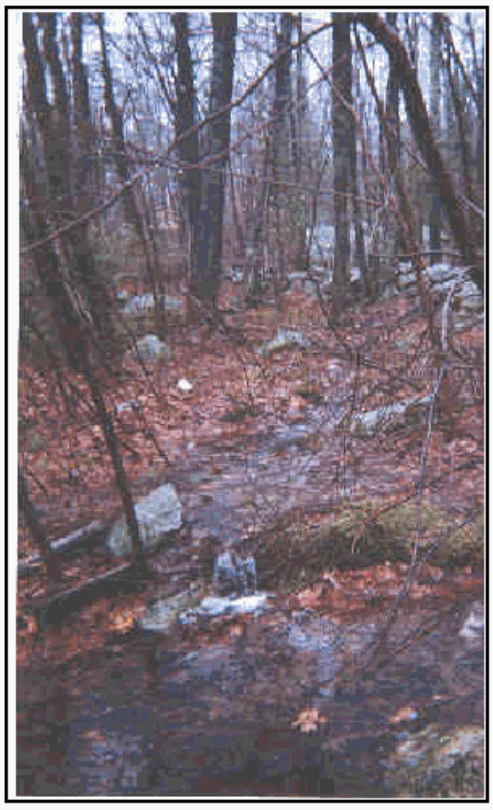
Detention/Pretension ponds grossly overlarge; consultants say these will not work. **Who will pay for the issues associated with allowing these if they do not work?**

Even though each community has a Zoning By-law which deals specifically with comprehensive permit applications, which is a requirement of the law, the developer simply does not abide by it. They claim that the ZBA should issue the permit with little design information or calculations; that the details will be worked out later. In the Goddard case, the developers attorney has repeatedly stated his plans are far more detailed than any other 40B to his knowledge. If this were true, considering the abundance of design related issues which remain unresolved, then other communities must be issuing permits virtually blindly.

These types of issues render the ZBA inadequate in its ability to properly hear a 40B permit application. A viable solution to this problem may be to create a 40B sub-committee comprised of select members of the Zoning Board, Planning Board, Conservation Commission, Board of Health, Open Space Committee and Housing Authority, who collectively could be given access to Town Counsel, and could also be provided guidance from DHCD themselves or from a regional Planning Agency such as MAPC.

Furthermore, DHCD must establish clear, understandable regulations which can be followed during a 40B permit process. The general guidelines available on the DHCD website are a good starting point but require specificity.

Proposed Goddard Highland Adjoining Property Locations



Existing Groundwater Level Documented at Only 22" Below the surface. Goddard Proposal Requires Importing of Fill to Build Up House Foundations. Construction of Storm Water Detention Ponds in Sizes Never Before Considered. ZBA Consultants Report it Will Not Work as Presently Designed.

Photos Taken March 30, 2001

Hello 40B Task Force,

I live in Watertown and just came from a zoning meeting last night where our local board denied Lincoln Properties a special permit to build 224 apartments (10% of which would be affordable housing) in my neighborhood.

As I was leaving, the Lincoln Properties developer, Mr. Noone, said to his project engineer "……..well now we'll just go for 40B".

According to a neighbor, Mr. Noone talked to him last week after the Conservation Commission and said something to the effect "you know I could have gone for 40B and built 500 apartments ... work with me".

This is an example, a very real example for me and my neighbors, of how developers bully neighbors into accepting what the neighborhood does not want. How can this be? I know this is not what 40B was intended for ….. yet 40B is being used as an weapon to overcome neighborhood planning efforts and local zoning boards.

Not only is 40B used as the developer's weapon of choice, 40B is just not working. According to statistics I read, only 17,500 affordable units have been added in the past five years. It's not working.

We need to put 40B on hold until we can figure out a way to make it work -----40B should be a tool to help build affordable housing ---- not a weapon developers use to bully neighbors.

Sue Jenkins
95 Rutland Street
Watertown, MA 02472

Community
Housing
Resource
Inc

tel 508. 487 2426

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Provincetown. MA
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Affordable housing restriction terms should be at least 40 years.

- Longer term affordable housing restrictions are needed with resale price formulas tied to median income rather than appreciation percentage is critical to preserve the affordable housing resource.

40B is not only needed to address the urban / suburban responsibility issues. 40B is needed for its procedural aspects as a mechanism that gives a proponent of affordable housing the opportunity to present a proposal in a "comprehensive" format, addressing all facets of a development proposal in the broadest of contexts:

- The process of a single board conducting the hearing on a 40B proposal requires that all concerned parties, for and against, have the opportunity and the responsibility to look at the proposal as part of the big picture.

- A determination of whether a proposal is "consistent with local needs" and if relief from local regulations is justified, can only be made in the context of a "comprehensive" review.

- And it affords the public an opportunity to see the merits – or shortcomings – of a proposal, and to hear the expression of community needs by affordable housing supporters that are often lost if multiple boards are conducting hearings on a proposal in the limited framework of their own regulations.

- And, importantly, the mechanism for relief under 40B needs to be better understood as a mechanism not very different from a variance, that Chapter 40A allows with very specific criteria; 40B as a relief mechanism just has different criteria for relief.

Working with the existing 40B regulations, procedurally, we need to encourage the "friendly 40B" process as a matter of course. The 40B process should encourage preliminary presentations to municipal staff and various boards in work sessions to solicit comment that can be incorporated in a plan before it is submitted. This should be prior to the expanded project eligibility letter process that requests comment from the chief elected official or board of selectmen. The MHP consultant services program would be useful to the town's at that point in the process.

Towns that have affordable housing plans with a higher goal than the 10% should still have access to the 40B process. And, in such communities, especially smaller communities, that want more affordable housing and 40B is a useful procedural mechanism, an "exemption" from 40B by adding ¾ of 1%, is actually limits the town's ability to approve a project that may have community support. (In the rewrite of Chapter 40A, perhaps there should be enabling provisions to allow a "comprehensive permit" uses under local bylaws for communities that want to go beyond the 10%.)

Town of Mansfield
Board of Selectmen
Six Park Row
Mansfield, MA 02048
(508) 261-7372

Town of Norton
Board of Selectmen
70 East Main Street
Norton, MA 02766
(508) 285-0210

January 16, 2003

His Excellency Governor Mitt Romney
Office of the Governor
State House
Room 360
Boston, MA 02133

Dear Governor Romney,

We, the undersigned municipal leaders, in the spirit of and in response to your call for innovative ideas to help cities and towns weather the current fiscal storm, exhort the immediate suspension of the MGL Chapter 40B, the Comprehensive Permit Law.

In this time of extraordinary financial crisis, we believe that the suspension of these regulations will grant some relief from the cost of municipal services by slowing the expansion of housing stock. The increase of the burden on towns to provide services, particular education, can be measurably slowed in a time in which cities and towns will be hard pressed to maintain even current levels. While this relief would not be immediate, the retarding of this overwhelming driver of municipal budgets would result in appreciable savings. Our call at this time for action on Chapter 40B, despite knowing that the savings would not be immediate, shows we appreciate and recognize the fact that this crisis may last for some time to come.

Concomitantly, the current fiscal emergency provides an atmosphere and an opportunity for a legitimate abeyance of Chapter 40B that will provide a measure of time for the legislature to retool the law. It needs to be returned to the intent of providing affordable housing and wrested away from those that would abuse it for profit. A unique opportunity

such as this to make 40B suspension attractive or politically viable has not existed in the past. Those that have previously blocked such challenges and changes will be hard pressed to justify continuation of this law in its present form. It is important to stress that we are not seeking repeal, just suspension to both ease financial burdens and to return the law to its original intent.

We continue to work on innovative solutions to mitigate the pain of this financial crisis and believe that suspension of the 40B provisions should be among the bold measures taken. Only strong leadership from our Governor and creative thinking from the citizens will see the cities and towns of Massachusetts through our present troubles.

Sincerely,

Daniel Donovan, Chairman

Louis Amoruso

David McCarter

Steven MacCaffrie

Michael McCue

Mansfield Board of Selectmen

Robert Kimball, Chairman

James V. Brown

James McPhee

Charles Moitoza

Clarence P. Rich, Jr.

Norton Board of Selectmen

MAR-27-03 THU 09:30 AM TOWN OF NORTON FAX NO. 5082850297 P. 03

Housing Facts & Findings

SHARING KNOWLEDGE ABOUT HOUSING AND COMMUNITY DEVELOPMENT ISSUES

Vol. 5 No. 1 2003

Top Ten State and Local Strategies to Increase Affordable Housing Supply

FannieMae FOUNDATION

By Arthur C. Nelson, FAICP

Surveys show that Americans are increasingly concerned about the availability of affordable housing, and yet housing tends to be low on most policy agendas. One reason might be that policy makers mostly think of addressing housing needs by spending money on subsidies—

but there are in fact many policy and program actions that can stimulate production of more affordable housing at little or no cost. It is imperative that housing move up on the policy agenda to meet the growing challenge posed by changing demographics.

Consider these facts that illustrate our nation's evolving housing needs:

- Despite the 1990s economic boom, the supply of housing fell 30,000 units below demand.
- Housing overcrowding increased by one-third in the same decade.

see TOP TEN on pg. 4

PERSPECTIVES

Housing Is an Economic Development Driver for Cities

By Mayor Michael R. Bloomberg

An adequate stock of affordable housing is fundamental to the long-term economic prosperity of cities. The challenge is to make scarce public dollars go further even in difficult budget times.

In New York, our strategy has two principal elements. The first is innovative financing, and the second is changes that will cut building and land acquisition costs in order to facilitate private housing construction. All the while, we must do what our conscience demands to help house homeless families and people with special needs.

As part of the financial strategy, over the next five years, we will implement new strategies that will create more than $3 billion in public spending on housing. That will finance 65,000 new and preserved units of housing, an increase of new units by 25 percent compared to the last five years. And it will, in turn, stimulate the private sector to make major new investments in our city.

Here's how the money breaks down. The City's Housing Development Corporation (HDC), a public benefit guaranty corporation, will leverage a new pool of $500 million. To create these funds, we're going to put HDC's cash assets to work and borrow against the mortgages that HDC holds. This will be in addition to funds raised through HDC's traditional tax-exempt bond financing. In addition, some $555 million in planned city and federal funding will be redirected from housing maintenance to new investment in targeted neighborhood renewal. And the remaining $2 billion is in the City's housing capital and expense budgets for housing creation and preservation.

Just as important is the second part of our plan: to jump-start private investment in targeted communities by removing barriers to development and reducing construction costs. I've directed city officials to streamline the approvals needed to develop and rehabilitate housing and to work with the city council to consider adopting the International Building Code. We are also undertaking targeted rezoning of abandoned waterfronts and underutilized manufacturing areas for mixed residential and commercial use.

The City will also stimulate private investment by providing low-interest loans to acquire and clean up brownfields for housing development and to renovate and lease apartments that have long been vacant and off the market. We are also emphasizing homeownership by helping new homeowners make their first down payments, while also encouraging private employers to do the same.

That's New York City's strategy: use government's resources to maximize private sector investment. The success of that strategy is crucial to our city's long-range economic future.

Michael R. Bloomberg is the mayor of New York City.

Housing Facts & Findings

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Let's Get Efficient About Affordability

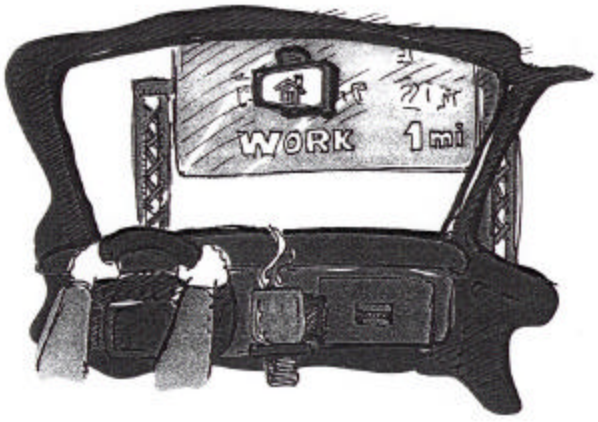
By Arthur C. Nelson, FAICP, and Carol A. Bell

How much is "too much" to pay for one's home? And how does another major household expense—transportation—relate to housing expenses? Standards for how much of its income a household can "afford" for housing are somewhat arbitrary and have changed over time. Originally, housing costs consuming more than 25 percent of household income were deemed excessive. That standard derived from the adage, "a month's rent should not exceed a week's pay." For federal low-income rental housing assistance programs, that standard of affordability was in place until 1982, when it was increased to 30 percent. More recently, federal policy has focused on assisting renters who face severe housing cost burdens, defined as housing costs in excess of 50 percent of income.

Nationally, the typical household spends 28 percent of its income on housing and related expenses, such as utilities, according to the Consumer Expenditure Survey conducted by the Bureau of Labor Statistics (BLS). (Some sources cite a lower percent, usually excluding utilities.) This compares reasonably to the federal government's "affordability" definition of 30 percent and the standard practice long followed by mortgage underwriters of limiting principal, interest, taxes, and insurance on mortgages to 28 percent of income in typical cases. (This standard has loosened in recent years but remains a common guideline.) Landlords often impose similar limits on renters.

However, consider also that the typical household spends about 14 percent of its income on transportation, also according to the BLS. If transportation costs can be reduced by half to 7 percent—perhaps by purchasing or renting a home near mass transit or within walking distance of a job—a household could "afford" housing costs equal to 35 percent of its income and would be no worse off as a consequence. A household with two adults, for example, might need just one car instead of two, or a single person might be comfortable without owning a car if other transportation is easily available.

The trouble is that, technically, such housing expenditures seem on the surface to make the housing unaffordable and, worse, render the household ineligible for a mortgage (or lease) based on that amount. A new mortgage process that takes into account lower transportation costs under certain conditions is being used in pilot projects in some parts of the country. "Location-efficient mortgages" allow larger mortgages for purchase of a home near mass transit.



Many people choose to live far away from their workplaces simply because they can afford a larger home, or one with more amenities, on the urban fringe. Providing incentives to counter that trend not only addresses the affordability issue but also can help meet other policy goals, such as limiting sprawl and traffic congestion, revitalizing urban areas, and strengthening city tax bases. For example, Baltimore's "Live Near Your Work" program is geared to inner-city revitalization and gives grants, funded by the City and employers, to people who purchase homes near their jobs in the city.

Living close to work or transit won't be feasible for every household, but it is an attractive alternative for many people. Reconsidering affordability and offering related incentives for "location-efficient" housing choice looks like a win–win strategy for policy makers and all Americans.

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TOP TEN *from pg. 1*

- It is estimated that by 2010, the number of families with children under 18 will fall by 3 percent, the number of nonfamily households will increase by 17 percent, and households without children will increase by 19 percent.
- The baby boom generation is aging, and the number of empty-nester households (ages 55 and older) is expected to double between 2000 and 2020. Some studies indicate that most of this group prefers town house or condo-style housing to traditional single-family detached homes.
- Because of the changing ethnicity of the U.S. population—much of it driven by immigration—the number of minority homeowner households will grow by 10 million from 2000 to 2020, with another 15 million new minority renter households.

As housing supply lags demand, essential workers often cannot afford to live in the communities where they work. My analysis of suburban communities in metropolitan Atlanta, for example, shows that production of housing affordable to school teachers and public safety officials in counties where they work can meet only about half the demand.

Frustrating efforts to expand housing supply to meet demand is NIMBYism. Not-in-my-backyard sentiments discourage especially moderate- to high-density housing. This may be one reason why the share of total housing units in structures of five or more units fell during the 1990s despite apparently growing demand.

In the face of growing demand for housing, especially of somewhat higher-density forms, but given a weak economy that shows few signs of returning to its 1990s level of production, combined with NIMBYism, what can be done to meet the housing needs of the next decade or two? Perhaps two things: 1) Recharacterize housing needs to get to YIMBYism ("Yes, in my backyard") and 2) Identify options to better meet housing demand through mostly nonsubsidized state and local solutions.

Who Needs Affordable Housing?

Let us consider how public policies and discussions characterize housing needs. First we had "public housing"—operated by the government, with some infamous and costly failures—a term that now carries a lot of negative baggage. Currently, the emphasis is on "affordable housing," which is supposed to mean privately provided housing affordable to the masses—but this concept seems to have gotten stuck with the subsidized housing tar baby. Inevitably, subsidized housing will continue to be needed for the lowest-income populations—but in fact, much of the housing constructed today is not affordable to most middle-income households. Often overlooked are the housing needs of productive individuals or families whose life-cycle situation or income, or both, limit their housing options in the current marketplace. The term "workforce housing" is gaining popularity in reference to school teachers, public safety professionals, medical technicians, and the like. It does not, however, include the fastest-growing group: retired households on fixed incomes, who can be labeled collectively as "pensioners." Thus, focusing attention on "workforce and pensioner" housing needs may be the most effective communications approach to get the public to say "Yes, in my backyard" to affordable housing.

Nonfederal Solutions with Limited or No Subsidies

What can be done to expand the supply of housing affordable to working families and pensioners? The federal government is probably tapped out, shifting the burden to state and local governments. But it needn't be viewed as a burden: A number of innovative, mostly nonsubsidized, steps can be taken to stimulate the private sector to build more workforce and pensioner housing. In many cases, simple actions such as code or zoning changes can make it possible for more affordable homes to be built; in other cases, a modest investment can offer a big payback in more housing. Here are my top ten innovations that state or local governments can use to address the housing need–production mismatch:

Changes in Local Codes, Zoning Regulations, Fees, and Procedures

1. *Streamlined Permitting.* Oregon and Florida provide two examples of streamlined permitting to promote production of housing affordable to working families and pensioners. Oregon may have the most favorable climate in the country for facilitating affordable housing production. State law there requires local governments to meet their "fair share" of the region's affordable housing needs, adopt clear and objective (rather than vague and subjective) review standards, and render land use decisions within four months of application. A special Land Use Board of Appeals hears appeals and gives decisions expeditiously—faster than in any growing state in the nation. Florida is more specific: Any housing development project meeting broad definitions of "affordability" is automatically entitled to expedited review by local government, even to the point of delaying decisions on other development proposals technically ahead in the queue.
2. *Accessory Dwelling Units.* Known variously as "granny flats," "garage-over" units, and the like, accessory dwelling units (ADUs) can provide affordable rental

housing options, especially for young or elderly singles. But ADUs are commonly prohibited by local codes, apparently because homeowners fear renters or higher densities in their neighborhoods. Some communities appear to be rethinking their approach, however. Portland, Oregon, has developed a model for ADUs for different types of neighborhoods based on a variety of design templates that minimize neighborhood impact. The State of Washington goes one step further by requiring jurisdictions with more than 20,000 residents to adopt ADU ordinances.

ADUs may be added to an existing home, such as through a basement conversion, or be included in a newly constructed home. *New Urban News* reports that many "New Urbanism"–style developments are offering ADUs in new homes, often above a garage or on an alley. An ADU can provide rental income to help pay the owner's mortgage, while offering future flexibility to use the space as a home office, lodging for teenagers or elderly family members, or guest quarters. ADUs, typically 500 to 600 square feet, have appeared in new housing developments in Florida, California, Oregon, Colorado, Illinois, Maryland, and North Carolina. In some cases, the developer sought local code changes to permit ADUs.

3. *Development Agreements.* Master-planned communities offer the opportunity to meet affordable housing needs in ways that smaller-scale subdivisions probably cannot. But few such communities are designed exclusively for affordability. One exception is Timberleaf in Orlando, Florida, a 188-acre mixed-use development where most of the 1,800 housing units are affordable, especially to Disney World employees. The city and Timberleaf developers negotiated the major questions of scale, timing, facilities, and density in one master plan that is implemented by a development agreement between the developer and the city. Although those negotiations took more than a year, individual approvals for stages of the development occur within 30 days. In contrast, similar approvals in the average subdivision in urban Florida take up to 18 months. The streamlined permitting process is managed by a design review committee (DRC), which is given specific authority to permit development in Timberleaf. The DRC provides a single forum for all city departments that have a role in the permitting process. It includes local bankers and developers, thereby ensuring sensitivity of permitting to the developer.

4. *Relaxed Floor-Size Minimums.* When homeownership became possible for the American masses in the postwar years, a typical Levittown house—the quintessential starter home—had 750 square feet. Today, many communities have zoning codes that require a much larger minimum housing unit size. A survey of metropolitan Atlanta suburban communities, for example, shows that nearly all limit detached housing to 1,200 square feet or more. Such minimums have no relation to the public health and safety provisions of building codes, which allow smaller units. In such communities, Habitat for Humanity cannot build homes because its largest home is smaller than 1,200 square feet. Simply eliminating the minimum size for homes and relying on standard building codes (such as the Uniform Building Code and the Southern Building Code) to ensure safe housing would expand housing opportunities. The concern that smaller homes might detract from the value of larger homes in the neighborhood has not been demonstrated significantly; indeed, neighborhoods with a wide range of housing sizes tend to appreciate better over time than those with uniform sizes.

In Shoreline, Washington, near Seattle, two-bedroom "cottage homes"—detached houses with just under 1,000 square feet—provide an affordable homeownership

opportunity. As reported in *The Seattle Times*, Shoreline adopted a cottage home ordinance in 2000. In the Meridian Park Cottage Homes development in Shoreline, the condo-style homes are close together but not attached, and the price tag is significantly less than the area's median home sale price. Yet, no one has claimed that these homes detract from neighborhood values.

5. *"Proportional" Impact Fees and Waivers.* Impact fees are one-time charges assessed on new developments to help pay for new or expanded infrastructure to serve them. The trouble is that they are typically flat charges imposed on all housing units of the same type, such as detached homes or apartments. Yet, census and other data show clearly that, on balance, larger homes have more people living in them (and hence have greater impacts on facilities) than smaller homes. In some situations, for example, the impact on schools of homes larger than 3,000 square feet is three times larger than homes of 1,000 square feet, yet both could be charged the same impact fee for schools.

   The solution is "proportional" impact fees that adjust the size of the fee to the size of the housing unit based on local studies that establish the relationship between house size and occupants, vehicles, school-aged children, and other factors. In addition, impact fees can be varied by location so that more expensive locations, such as those at the urban fringe, are charged more than those where costs may be lower. Such proportional refinements to impact fee practice may stimulate production of more affordable housing. In addition, policies can be adopted to waive impact fees for qualifying low- and moderate-income housing.

Policy Initiatives

6. *Affordable Housing Trust Funds.* Housing trust funds are powerful tools for providing locally targeted and managed assistance for affordable housing. There are nearly 300 housing trust funds in the United States—37 states have trust funds and the rest are mostly run by counties and cities. The funds have a variety of revenue sources, but among the most common are some portion of the local real estate transfer tax, penalties on late payments of real estate taxes, and fees on other real estate–related transactions. In a few cases, private-sector employers whose workers face a shortage of affordable housing support housing trust funds—the Silicon Valley Manufacturing Group in California is one of the founders and a key funder of the Housing Trust of Santa Clara County, a public-private partnership.

   Each housing trust fund has a governing body that decides how the funds are used. Some support demand-side solutions, such as subsidizing the down payment on a home purchase by low- to moderate-income residents. But housing trust funds are often used to increase the supply of affordable housing, such as by providing zero-interest loans or gap financing for affordable housing new construction or rehabilitation.

7. *Apartments Can Support Single-Family Housing Values.* There is the popular perception that multiple-family or attached housing per se reduces the value of nearby single-family or detached housing. In the past there was ample evidence for this, but with current building code and site-planning requirements this may no longer be the case. For example, there is growing academic evidence that new apartment developments may increase values of nearby single-family homes for three reasons. First, the mere fact that higher-density housing is attracted to an area by market forces signals higher values for all properties. Second, and more subtle, multifamily housing may increase the supply of potential buyers for nearby single-family homes. Third, when part of a mixed-housing and mixed-use development, higher-density housing adds choice to an area that by design is made more attractive than nearby developments. But owners of single-family detached homes may remain anxious about attached housing developments in their communities. One response may be a "home equity assurance" program. Such a program was pioneered in the late 1970s in Oak Park, Illinois, to discourage panic selling in the face of racial transition. It has apparently been successful, and similar programs are now operating throughout Illinois. An equity assurance program enrolls property owners near higher-density residential projects and pays the difference between the appraised value and the sale value if it is negative. Oak Park has yet to pay out under its program. While experimental, the Oak Park solution may be worth considering elsewhere.

8. *Inclusionary Housing Requirements.* Montgomery County, Maryland, and Fairfax County, Virginia, are geographically contiguous and have many similarities, including that both face the problem of providing affordable housing, yet they have very different governmental contexts. Both counties are in the Washington, D.C., metropolitan area, have nearly 1 million residents each, and are among the nation's wealthiest counties. They also face significant growth pressures. Why are they different? Maryland is a "home rule" state that gives cities and counties substantial discretion in managing such local affairs as planning and

zoning, while Virginia is a "Dillon Rule" state, meaning that local governments need specific permission from the state to assume most responsibilities. Despite their institutional differences but because of their similarities in managing growth, both have devised roughly similar approaches to meeting at least some needs for affordable housing.

Montgomery County's Moderately Priced Dwelling Unit ordinance requires developers of more than 50 detached residential units to set aside 12.5 to 15 percent of all units for price-controlled sales over 20 years, in exchange for density bonuses of 20 to 22 percent; the exact numbers are determined on a sliding scale relative to project size. After initially being struck down by Virginia courts, the Fairfax County Affordable Dwelling Unit ordinance was crafted to survive future court tests. It gives a density bonus of up to 20 percent to developments of more than 50 units that voluntarily set aside 6.25 to 12.5 percent of them for "affordable" housing. Unlike Montgomery County, the Fairfax County ordinance applies to all residential developments, not just to for-sale developments. In both cases, a coalition of housing advocates, businesses, and civic leaders championed the need for inclusionary housing.

9. *Housing Enterprise Zones.* For several decades, Atlanta's population has declined as households moved to the suburbs. There were several reasons for this, not the least of which was that suburbs simply offered better value in new housing relative to the older stock in the city. To induce new residential development in targeted areas near downtown and other commercial nodes, and near public transit, the city created a housing enterprise zone program. Within these zones, new owner-occupied dwellings receive a 100 percent property tax abatement the first year, a 90 percent abatement the second year, and so forth over 10 years. In addition, impact fees are waived for new housing of all types—including rentals—built in enterprise zones; payments in lieu of those fees are financed from a special housing trust fund created by the city's impact fee program. Property tax abatements have long been used to provide incentives for commercial development. For housing, the return on investment in forgone taxes and fees can be more stable neighborhoods, a stronger future property and sales tax base, and an increased supply of all housing, including units affordable to working families and pensioners.

10. *Leveraging the Low-Income Housing Tax Credit.* Created in 1986, the Low-Income Housing Tax Credit (LIHTC) program gives investors in qualifying projects a credit against their federal income taxes. A rental property allocated tax credits is required to be affordable to low-income households for at least 15 years. The manner of implementation is left up to individual states. With the program now more than 15 years old, however, units built 15 years ago may revert to market-rate housing, thereby reducing supply. In some states, new LIHTC approvals are simply replacing older units that move to market-rate housing. However, in some states, such as Washington—where 20,000 units have been provided under the program since 1987—tax credit recipients agree to make units affordable to low-income households for 40 years instead of the federally required 15-year minimum. Even with a 40-year contract, there is a waiting list of investors. States that meet just the minimum IRS terms may consider the example of Washington and other states to maximize production of affordable housing; otherwise, after 15 years or so, all many may be doing is using new tax credits to replace units moving to market rate.

"A comprehensive assessment [is needed]...to meet future housing needs for a rapidly changing society."

The Future Canvas

According to census data, the United States loses about 0.6 percent of its housing stock annually. Within a generation, by 2025, it will lose about 15 million units. Between 2000 and 2025, the United States will add nearly 30 million households. A total of about 45 million new housing units will need to be built, or about half as many units as existed in 1990. Where will these units go? More important, will all those units even be built? A comprehensive assessment of long-term housing needs, at least at the level of metropolitan areas, needs to be undertaken, and each community needs to be a constructive part of the dialogue to meet future housing needs for a rapidly changing society.

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RESOURCES

Web Sites

The Regulatory Barriers Clearinghouse sponsored by the U.S. Department of Housing and Urban Development is dedicated to helping state and local governments identify and overcome regulatory barriers that deter private investment in affordable housing production and maintenance. (www.regbarriers.org)

For information on housing trust funds: Center for Community Change (www.communitychange.org/htf.html)

Housing Trust of Santa Clara County is a public-private partnership that uses innovative strategies to promote affordable housing. (www.housingtrustscc.org)

What are cities doing about affordable housing? (www.usmayors.org)

The Planning & Development Network offers a variety of news articles, reports, and resources about affordable housing and other topics. (www.planetizen.com)

More about New York City Mayor Bloomberg's housing initiative "The New Marketplace: Creating Housing for the Next Generation" can be found on New York City's Web site. (www.nyc.gov)

Articles and Reports

Article on "Granny Flats" from *New Urban News* (www.newurbannews.com/accessory.html)

Housing Trust Funds for Local Governments in Georgia by Frank S. Alexander: Designed for Georgia, this report could provide initial guidance for creation of housing trust funds in other states as well. Go to www.knowledgeplex.org and search on the title.

Insight

"The affordability crisis for many is exacerbated by the cost of construction across the country—which has priced many people out of the market. That's why New York and other cities are working to revise their building codes."

—"Cities Take On Housing Crunch, Creatively," *The Christian Science Monitor* (Dec. 24, 2002)

FNF R 229

This month we share commentaries from two land-use attorneys and a planning director in Massachusetts who commiserate over a few of the land-use statutory provisions that handicap communities in that state. Many states, including Massachusetts, still labor under the influence of the 1928 Standard City Planning and Zoning Enabling Act drafted by the U.S. Department of Commerce for a different era and different challenges. What's changed in the past 73 years?

- *We have many more people consuming a much larger share of a finite and non-renewable resource base.*
- *We are a more mobile society, with two cars in the garage and more roads to open the former "hinterlands" to development.*
- *We have developed consumptive land-use patterns which are environmentally and socially destructive.*
- *We have a more politically active citizenry who want to be engaged in a meaningful way in shaping their community's future.*

A survey conducted in 1997 by APA research staff found that only 11 states at that time had substantially updated their planning laws. Since then, both Tennessee (S.B. 3278 in 1998) and Wisconsin (A.B. 133 in 1999) have made substantial reforms. Although the Massachusetts Legislature has made a number of improvements to the state's planning and land-use laws, Russell, Witten, and Broadrick each point out the need for more reforms.

This month the American Planning Association rolls out the Growing Smart℠ Legislative Guidebook: Model Statutes for Planning and the Management of Change. *This project, the culmination of seven years of research and drafting, provides states such as Massachusetts with concrete options for statutory reform to meet the challenges of the 21st century. Those interested in addressing affordable housing issues might review Chapter 4 in the Guidebook.*

The Growing Smart℠ Legislative Guidebook, 2002 Edition *(Stuart Meck, FAICP, General Editor) and companion* User Manual *can be ordered through the American Planning Association's Planners Book Service at (312) 786-6344; (312) 431-9985 (fax) or order online at www.planning.org and click on Planners Book Service under APA Store. It also may be downloaded from APA's website, www.planning.org*

Massachusetts Land-Use Laws—Time for a Change

By Joel S. Russell, Esq.

Some states are further ahead than others in the "smart growth" movement. Unfortunately, Massachusetts is near the rear of the parade. Despite its reputation as a progressive state, the legal climate for planning and zoning in Massachusetts is not conducive to "smart growth." The state's antiquated land-use statutes needlessly restrict local efforts to protect the environment and guide growth and development in a sustainable and responsible manner. Local governments are frequently prevented from effectively implementing "smart growth" principles and controlling their own destiny.

Joel Russell is a land-use lawyer and planning consultant with a national practice based in Northampton, Massachusetts.

This commentary discusses three of the most serious deficiencies in the Massachusetts land-use statutes and some of the practical problems they create.[1] These provisions share a strong bias in favor of private property rights and against effective community planning. Massachusetts courts have consistently reflected this same bias in their decisions.

- Weak master plans and no consistency requirement between plans and zoning regulations.
- "Zoning freezes" that allow property owners to thwart implementation of the community's plan.

1. The problems mentioned in this commentary are by no means the only problems found in the Massachusetts land-use statutes; however, the author has personal experience with these problems as a consulting planner and land-use attorney in Massachusetts.

Commentary

- Divisions of land that escape local review and approval, commonly known as "Approval Not Required" land divisions.

NO CONSISTENCY REQUIRED—WHY PLAN?

MASS. GEN. LAWS ANN. ch. 41, §81D purports to mandate that communities prepare a master plan (also called general plan or comprehensive plan in other states), and spells out what elements are required in the plan, but fails to mention any consequences if a plan is not adopted. While the statute requires that "[t]he comprehensive plan shall be internally consistent," it does not require that the zoning regulations be consistent with and support the goals and objectives of the plan. The Standard Zoning Enabling Act provision that says zoning must be "in accordance with a comprehensive plan" does not appear in the Massachusetts statute. There is no real remedy for zoning actions taken in direct violation of master plans, although an adopted master plan is one of many factors a court may consider in reviewing the validity of a zoning action.

This creates an obvious problem for planners, made more difficult when combined with the provisions on zoning freezes. The lack of a "consistency requirement" means that the zoning regulation is the guiding law of the community and the master plan is largely irrelevant. In at least 14 other states, the consistency doctrine ties plans to one another and to the actions that implement them[2] "[T]he consistency doctrine is the expression of the idea that plans are documents that describe public policies that the community intends to implement and not simply a rhetorical expression of the community's desires."[3] If there is no statutory consequence for failing to plan—and no requirement that land-use regulations such as zoning be consistent with the plan—one wonders, "Why plan at all?"

FREEZE THE ZONING: A RACE ENSUES

Revisions to a master plan may tip off a property owner that a community is considering zoning amendments, encouraging him to file an application to "freeze" the current zoning on his property and avoid the new development restrictions that might be in the pipeline. This undermines the community's attempt to plan its future because the obvious hidden message to the planner is: "Don't prepare a plan, just put in the zoning as quickly as possible, satisfy the minimum public notice requirements, and hope that most property owners don't find out until after the zoning is adopted."

While some other states have similarly ineffectual provisions for master plans, nothing compares to MASS. GEN. LAWS ANN. ch. 40A, §6—the infamous "zoning freeze" provision. Section 6 mandates an imbalance in favor of property owners by allowing for very early vesting of rights under preexisting zoning.[4] Even the specialized Land Court judges, who regularly interpret section 6, say that parts of section 6 are virtually incomprehensible. Section 6 is designed to protect property owners from injustices that may be caused by zoning changes, a laudable goal in principle. However, good planning requires a balance between protecting property rights and protecting public welfare.

Aside from their complexity and obscurity, these freeze provisions frustrate the community's attempt to plan and make it impossible for Massachusetts municipalities to correct past zoning mistakes. As soon as it becomes clear that a community intends to change its zoning regulations to be consistent with its master plan, property owners rush to file development applications because section 6 allows them to protect their rights by "freezing" the existing zoning. Sometimes these property owners even feel obligated to propose development they otherwise would not have proposed, just to freeze their zoning. They file these applications in order to protect themselves against the very zoning changes called for in the master plan to accomplish the community's goals.

2. The following states have included a consistency requirement in their planning and land-use statutes: Arizona at AZ. REV. STAT. ANN. § 9-462.01(F)(West 1999); California at CAL. GOV'T CODE ANN. § 65350 (West 1997); Delaware at DEL. CODE ANN. tit. ix, § 2651(b) (West 1999); Florida at FLA. STAT. ANN. § 163.3167(2), (4) (West 1990); Kentucky at KY. REV. STAT. ANN. § 100.187 (Michie 1993); Maine at ME. REV. STAT. ANN. tit. 30-A, §4352.2 (West 1996); Nebraska at NEB. REV. STAT. § 23-114.03 (1997); New Jersey at N.J. STAT. ANN. § 45-22.2-2 (Lexis 1999); New York at N.Y. TOWN LAW § 272-a (11)(a); Oregon at OR. REV. STAT. § 197.010(1)(d); Rhode Island at R.I. GEN. LAWS § 45-24-31(16) and § 45-24-34; South Carolina at S.C. tit. 6 ch. 29 §6-29-720 (B); Washington at WASH. REV. CODE ANN. § 36.70A.040 (3) (West 1999); and Wisconsin at WIS. STAT. § 66.0295(3).

3. Lincoln, Robert, AICP, Implementing the Consistency Doctrine, MODERNIZING STATE PLANNING STATUTES—THE GROWING SMART WORKING PAPERS, VOL. 1, PAS REPORT No. 462/463, American Planning Association.

4. Several states have "vesting" statutes intended to protect the legal status of rights obtained at various points in the development review process. Vesting statutes are laws that create criteria for determining when a landowner has achieved or acquired a right to develop his or her property in a particular manner, which cannot be abolished or restricted by regulatory provisions subsequently enacted. This is called a vested right because it is a right that has become fixed ("vested") and cannot be eliminated or amended. There is a common thread through most existing vested statutes.

For the development rights to be vested, the government must have made a decision and the landowner must have, in good faith, relied, to his or her detriment, on that decision by making some improvement to the land or some other commitment of resources. A number of states have enacted vesting statutes that specify what sort of government decision, and what detrimental landowner actions made in reliance on that decision, trigger estoppel, as well as other issues concerning vesting of development rights.

As to the key issue in vested rights statutes—what permit or approval triggers—there are various approaches. Arizona, Colorado, and North Carolina statutes create a vested right from a development plan that is "site specific;" that is, a plan must have sufficient specific detail on the proposed development of the property, such as a subdivision plat, planned unit development, or development agreement. California relies upon the "tentative vesting map," while Massachusetts creates a vested right from approval of "a definitive plan or a preliminary plan followed within seven months by a definitive plan," and Pennsylvania vests the right to develop pursuant to an approved subdivision plat. Florida grants a right to complete a development regional impact pursuant to a final development order if development is proceeding in good faith. Kansas vests upon the recording of a plat for single-family residential development, and for all other development upon the issuance of all necessary permits if "substantial amounts of work have been completed" pursuant to the permits. Virginia grants a vested right when there is a significant affirmative governmental act, such as a rezoning, special use permit, variance, or plat or site plan approval, and the owner is in good faith reliance on that affirmative act makes significant expenditures or incurs significant obligations. GROWING SMART℠ LEGISLATIVE GUIDEBOOK, 2002 Edition, Chapter 8.

Commentary

As an example, during the fall of 1999, the Martha's Vineyard Town of West Tisbury proposed a temporary moratorium on building permits for new single-family houses in order to give the town some time to consider adopting growth control measures. In the first six weeks after the moratorium was proposed, the town granted the same number of building permits it had given out during the entire preceding year. Spurred by the proposed moratorium legislation, property owners filed applications just to ensure that they would not be subject to it. The moratorium was intended as a temporary measure to enable the town to buy time while it crafted new development regulations to control growth. Instead, the moratorium had the opposite effect, greatly accelerating growth. The West Tisbury Planning Board, knowing the way that section 6 undermines planning, had accurately predicted this response and recommended against adoption of the moratorium. This experience is typical whenever a moratorium or any type of downzoning is proposed in Massachusetts.[5]

APPROVAL NOT REQUIRED (ANR)

The Massachusetts Subdivision Control Law[6] may well be the longest and most arcane subdivision statute in the nation. Massachusetts authorizes land to be subdivided to the horizon along an existing road, while maintaining the fiction that such developments are not subdivisions. The law defines "subdivision" in such a way that road frontage subdivisions simply are not subdivisions and cannot be subjected to planning board review. If the lots meet minimum frontage requirements in the zoning, the planning board has no choice, but to endorse such plans Approval Not Required.[7] If the sole purpose of subdivision review were to control road construction for new subdivisions (which was apparently its original purpose), this might make some sense. However, the creation of building lots determines the future of our communities—affecting the community's appearance, population density, and the location of curb cuts, necessary utilities, and services, among other things. Sprawl along existing roads has become a dominant and depressing feature of the landscape, causing aesthetic damage, drainage nightmares, and safety hazards from poorly sited driveway entrances.

Local governments legitimately feel powerless to control this insidious pattern of development. There is an absurd quality to the notion that the planning board must endorse the creation of lots that it knows do not satisfy applicable zoning or board of health standards and that directly contradict the community's goals as expressed in town plans. A subdivision statute should support, not undermine, municipal planning goals. It should encourage planners, neighbors, and developers to work together to protect what they value, develop what they need, maintain stable and diverse economies, and allow a fair return on land investments.

5. The Town of Framingham experienced a surge in apartment development in the mid-'70s, which was directly attributable to a proposed moratorium on apartments. It took nearly 20 years for the market to absorb all of those hurriedly planned and constructed apartments.

6. MASS. GEN. LAWS c 41 §§ 81K-81GG, the Subdivision Control Law.

7. MASS. GEN. LAWS c 41 § 81P

POSSIBLE SOLUTIONS

The time has come for Massachusetts legislators to give the power back to local communities to implement their plans. The solutions to the problems listed above are not technically difficult to find. The problem in Massachusetts has been political—a combination of ignorance about these complex issues on the part of state legislators, the stranglehold of special interest lobbies on the state legislature, the sheer incomprehensibility of much of the statutory language, and a lack of leadership in both the executive and legislative branches on these important issues.

1. The solution to lack of a consistency requirement between planning and zoning is as obvious as the problem. More and more states now require that zoning must be consistent with an adopted master plan. In those states, master plans actually have teeth and local and state governments frequently pay attention to them. Massachusetts should do the same.

2. The solution for the "Approval Not Required" land division is equally simple. By amending the definition of "subdivision" so that it does not exclude land divisions on existing roads, these developments would become eligible for planning board review.

3. The zoning freeze/vested rights issue is more complicated. One solution is to allow the constitutional doctrine of due process to govern this issue and give municipalities more flexibility to set their own rules if they want to be more generous to property owners than the constitution requires. Alternatively, the state could offer some degree of protection to property owners beyond what is constitutionally required (as many other states do), without entirely undermining the planning process.[8]

The Town of Dover in New York State provides an example of how one community tailored a vested rights provision to suit its needs. The town adopted a new zoning law in 1999. There were a number of subdivision applications in the pipeline during the time the new zoning was under consideration. Members of the local governing body deliberated as to what was a fair cut-off point for applying the prior zoning to applications already under review. They did not want to encourage any new applications to be filed under the old zoning, but they wanted to be fair to those property owners who had acted in reliance on that zoning in preparing existing applications. They considered using one of the following four cut-off points for granting this protection: (1) plans that had final approval, (2) plans that had preliminary approval and for which a final application had been filed, (3) plans for which preliminary approval had been granted, and (4) plans for which a hearing had been held for preliminary approval but no decision had yet been made. They settled on the third alternative, which was a reasonable compromise under the circumstances that was fair to applicants and did not invite widespread circumvention of the new zoning law. The town was free to design rules that strike an appropriate balance between implementing a plan and protecting property rights.

8. *See*, Chapter 8, GROWING SMART℠ LEGISLATIVE GUIDEBOOK, 2002 Edition for statutory approaches to vested rights.

Commentary

CONCLUSION

The current Massachusetts land-use statutory framework is highly dysfunctional. The confusion and conflict generated by this convoluted body of state law result in complex litigation that delays both municipalities and developers for months and years. Massachusetts law throws large and unnecessary obstacles in the paths of municipalities that want to protect their environment, control sprawl, and build affordable housing. It ties their hands to such an extent that they cannot legislate effectively to implement the very master plans that are the key to their future. Consequently, such plans are rarely undertaken and even more rarely implemented. More often than not they produce the opposite of their intended results. A change is long overdue.

Affordable Housing—At What Price?

By Jon Witten

I heartedly concur with Joel Russell's observations of the Massachusetts land-use statutes. Meaningful land-use planning in Massachusetts is an oxymoron, a combination of Byzantine governmental relationships and historically limited leadership in the land-use field at the state level. I offer two additional problems to Joel's list of woes.

PROBLEM #1: NO PLANS, NO VISION

First, and consistent with Joel's remarks, the lack of any meaningful planning requirement at the state, regional,[1] or local level has led to a chaotic battle between developers, environmental and housing advocates, and residents of the state's increasingly urban landscape. As regional and local governments have no formal opportunity to articulate priorities and plan for the future (a locally adopted comprehensive plan is all but meaningless in the court's eyes,[2] the issue du jour becomes the focal point and the priority of the moment. But as the legislatures of an increasing majority of states have learned, land-use and economic development planning must be done comprehensively.[3] Single-issue solutions always create other problems and often only cater to one vested interest group at the expense of the public-at-large.

Massachusetts' failure to mandate or even encourage meaningful comprehensive planning is overshadowed only by its lack of political courage and leadership exhibited by its retention of the "Anti-Snob Zoning Act" adopted in 1969 and unchanged since.[4]

PROBLEM #2: NO PLANS + NO VISION = EXCLUSIONARY ZONING?

Whereas states that require or encourage comprehensive planning mandate that local governments develop programs and plans to ensure an adequate supply of affordable housing units,[5] Massachusetts stipulates that if a city or town does not have at least 10 percent of its housing stock set aside with a non-transferable subsidy, it is vulnerable to an application for a comprehensive permit under the Anti-Snob Zoning Act.[6]

The effects of the Anti-Snob Zoning Act are draconian enough to make any land-use planner cringe. Wrapped in the trimmings of promoting "affordable housing," this statute magically transforms historically undevelopable lands into "affordable housing" projects. The density of many of these projects is frighteningly reminiscent of those sponsored by the federal government in the 1960s (many of which were torn down in the 1990s).

In cities or towns that do not have at least 10 percent of their housing stock subsidized, the statute allows any developer who agrees to limit her profit to that set by a

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1. Two notable exceptions exist. The Martha Vineyard Commission and the Cape Cod Commission. These regional entities with regulatory review authority were created by the legislature (many members having summer homes on the Island or Cape Cod) after attention was called to the rapid destruction of both resources. Attempts to create regional regulatory authority elsewhere has failed, however, and the last three governors, reversing a national trend, have urged the elimination of county government.

2. "Neither the master plan itself nor the law requires that zoning be in strict accordance with a master plan." Rando v. Town of North Atteborough, 44 Mass. App. Ct. 603, 612, 692 N.E.2d 544, 550 (1998).

3. *See*, for example, planning statutes in Vermont, California, Oregon, Florida, Maine, Rhode Island, Georgia, Washington, Maryland, South Carolina, and Tennessee. *See also*, Raymond Burby, et al, "Is State Mandated Planning Effective?" LAND USE LAW & ZONING DIGEST 45, no. 10 (October 1999).

4. Mass. Gen. Laws c. 40B, §§ 20–23.

5. For example, California Government Code § 65302(c) mandates that the local comprehensive plan include a "housing element" that reflects the legislature's goal that all local governments accept responsibility to adopt housing plans that contribute to the attainment of the state's housing goal. Committee for Responsible Planning v. City of Indian Wells, 209 Cal. App. 3d 1005 (1989). California has adopted a statewide housing goal; there is no articulated statewide housing goal in Massachusetts.

6. Mass. Gen. Laws Ann. c. 40B, §§ 20-23. "Comprehensive permit" in that one permit for all local approvals is theoretically obtainable from one board (the Board of Appeals). The title of the statute: "Anti-Snob Zoning Act" is a curious title in a state whose judiciary has regarded exclusionary zoning as generally consisting of one and two acre minimum lot sizes. *See*, for example, Aronson v. Sharon, 346 Mass. 598, 195 N.E.2d 341 (1964) and Johnson v. Town of Edgartown, 425 Mass. 117, 680 N.E.2d 37 (1997).

subsidizing agency[7] to request a waiver from any and all locally adopted rules, regulations, or ordinances. Perhaps the most shocking aspect of the statute for anyone not accustomed to anarchy is the fact that the community has extremely limited ability to impose reasonable restrictions on such development regarding height, bulk, width, setbacks, density, or other traditional health, safety and/or aesthetic concerns. A project filed under this statute is transported to another place and time, one where locally adopted rules and regulations are suspended. The only rules are those negotiated between the local review board and the applicant. The role of the abutting property owner is reduced to nothing more than a dreaded "NIMBY," made worse by his or her opposition to "affordable housing."

What proponents of this statute refuse to admit, however, is that the abutters' opposition is directed at a process where rules and regulations are callously tossed out the window—the beneficiaries being the land speculators and developers, not those in need of "affordable housing." That this charade continues is an insult to the citizens—past, present and future—of the state whose constitution was the model for the Constitution of the United States.

One would suspect that the price a developer would have to pay for the suspension of local rules and regulations would be high, analogous to the price a developer must pay in late vesting states for entering into a development agreement. Needless to say, as noted in Joel's commentary, Massachusetts is an early vesting state. The price a developer pays is shockingly low. At least 25 percent of the housing units must be set aside for rent or sale to those earning 80 percent of the median income of the region.[8] Recall, however, that the rules on density are cast aside. The 20-acre parcel that was zoned for 40 units originally is likely the recipient of 140-160 units with the density restrictions waived. Twenty-five percent of 160 is 40, leaving 120 units available for sale at market rates.

Adding insult to injury, the most popular subsidy programs require that the affordable units remain affordable for a period of at least 15 years.[9] On the 16th year, the lucky homeowner who purchased the unit, perhaps only the year before, for below market rates, can now sell the unit for a windfall. And the city loses an affordable housing unit, putting it further behind its Sisyphean quota.[10]

Recognizing that cities and towns would likely rebel against such state-controlled mandates, the Massachusetts Legislature provided that any developer whose project was denied or approved with too many conditions could appeal to an administrative agency (the Housing Appeals Committee) for expedited relief. Through the promulgation of its own rules and regulations and 30 years of decisions, the HAC has repeatedly upheld and strengthened the statute. In decision after decision, the HAC has dismissed local offers of proof and/or concerns regarding the extent of affordable housing already existing within the community,[11] environmental impacts,[12] traffic congestion and emergency access,[13] drainage problems,[14] visual impacts and property devaluation,[15] school overcrowding,[16] inconsistency with a locally adopted plan,[17] and water pressure and supply limitations.[18] The HAC touts its respect for local planning and local planning issues but its decisions indicate otherwise. In a recent and particularly egregious decision, the HAC ruled that a condition placed on a previously approved subdivision plan precluding the further division of an approved lot must yield to a subsequent comprehensive permit application.[19]

The majority of states encourage local governments to provide affordable housing units in concert with other important land-use and economic needs and goals. That is, affordable housing is perceived as no more and no less important than the provision of clean water, efficient transportation systems, and a healthy ecosystem. These jurisdictions allow the provision of affordable housing through a creative and progressive system of plan consistency and plan implementation requirements. Ignoring this approach, Massachusetts has instead adopted the "cram down" mechanism of the Anti-Snob Zoning Act.

7. The two most popular home ownership subsidies (the New England Fund and the Housing Starts program) have established a limitation on profit to 20 percent of development costs. This profit allowance is significantly greater than the norm. A recent study by the research division of the National Association of Home Builders reports that the average annual profit earned by homebuilders is 6.35 percent. Ed Calderia, NAHB Research Center, "Moving to the Next Level of Profitability," www.nahbrc.org.

8. In the Boston metropolitan area, 80 percent of median income is $56,000, hardly the cohort in need of subsidized housing.

9. The New England Fund was recognized by the Housing Appeals Committee as a valid subsidy program even though the "subsidy" is a mortgage loan granted by a private bank. The bank requires that the "affordable unit" remain affordable for at least 15 years.

10. The statute has been in place for 32 years, yet less than 30 of the state's 351 communities have met the 10 percent quota.

11. Hadley West Associates v. Haverhill Board of Appeals, (Mass. Housing Appeals Committee, No. 74-02, September 24, 1974).

12. C.S.R. Management, Inc. v. Yarmouth Board of Appeals, (Mass. Housing Appeals Committee, No. 95-01, September 5, 1995).

13. Dexter Street LLC v. North Attleborough Board of Appeals, (Mass. Housing Appeals Committee, No. 00-01, July 12, 2000).

14. Spencer Livingstone Assoc. Ltd. Partnership v. Medfield Zoning Board of Appeals, (Mass. Housing Appeals Committee, No. 90-01, June 12, 1991).

15. Cedars Holdings, Inc. v. Dartmouth Board of Appeals, (Mass. Housing Appeals Committee, No. 98-02, May 24, 1999).

16. Woodcrest Village Associates v. Board of Appeals of Maynard, (Mass. Housing Appeals Committee, No. 72-13, February 13, 1974).

17. Planning Office for Urban Affairs v. North Andover Board of Appeals, (Mass. Housing Appeals Committee, No. 74-03, May 5, 1975).

18. Cooperative Alliance of Massachusetts v. Taunton Board of Appeals, (Mass. Housing Appeals Committee, No. 90-05, April 2, 1992).

19. Woodridge Realty Trust v. Ipswich Board of Appeals, (Mass. Housing Appeals Committee, No. 00-04, June 28, 2001). The impact of this decision will be difficult to measure. All parcels set aside by a developer as "open space" within a standard subdivision, land presumably set aside as a "buffer" between abutting properties, lots that are "underdeveloped" and structures that could be built higher, wider and bigger are all likely targets of developers building under the statute.

Commentary

This bitter pill could be palatable if the legislature and governor knew better than the state's 351 municipalities. But as Joel describes relative to the state's Zoning Act and as discussed above regarding the development of affordable housing, the Massachusetts land-use statutory framework is dysfunctional. Both statutes are also arbitrary. The sad truth regarding such dysfunction (I prefer to call it anarchy) is that it benefits a small group of land speculators to the detriment of the public-at-large.

In addition to promoting anarchy, the Anti-Snob Zoning Act is a model of arbitrary rule-making. The fact is, there are no rules under the statute; no predictability, no due process. It is hard to imagine a court supporting the statute today, even with the highly deferential standard granted legislative actions.

CONCLUSION

The reform of the Massachusetts Zoning Act and Anti-Snob Zoning Act could come about in one of two ways. One possibility is that either or both will be challenged in court by newly emerging organizations disgusted by Massachusetts's arcane land-use and planning statutes and abdication of leadership at the state level.

A second possibility is that the legislature and/or governor will muster the political courage to fix Massachusetts's land-use laws, including those geared toward the creation of affordable housing. Clearly, seizing this opportunity before the courts fix—or void—the law is the preferred alternative.

My Two Cents

By Tom Broadrick

I recently had the opportunity to discuss zoning reform with council members of the Southeastern Regional Planning and Economic Development District, one of 13 regional planning agencies in Massachusetts. I had distributed another of Joel Russell's articles on zoning reform and found that the council members were very interested in the issue.

In a nutshell, we must do away with the Approval Not Required process. ANR under the Subdivision Control Law is a provision of Massachusetts land-use laws that causes problems for municipal planners like myself. ANR allows development of land that we simply cannot anticipate or plan for since we have no way of controlling access issues, water provision, fire and police services, and public safety through reasonable application of our local subdivision regulations. We need to get rid of it.

Zoning Freezes are another big problem. Before municipal planners can even muster support for a two-thirds vote at an annual town meeting to amend a zoning bylaw, we must advertise the content of the proposed change which simply signals the development community to file preliminary plans that "lock in" the current zoning prior to any votes on the new zoning that might benefit the community. We must change the "vesting rights" to something reasonable and fair to both the development community and to the municipalities.

In the community in which I am the planning director, we have a comprehensive plan adopted by the planning board, endorsed by the board of selectmen, and most important, it is the framework which guides the work of our local zoning bylaw implementation committee. The zoning bylaw is linked to the comprehensive plan and reflects the wishes of the citizens of our community. This linkage is called consistency. But most communities do not link their comprehensive plans to zoning; many planning boards fail to even adopt comprehensive plans, so they sit on the shelf gathering dust! How can a community know what type of zoning is appropriate if no plan has been adopted based upon citizen's input? We must change the statutes to link zoning to the community's comprehensive plan and mandate that communities adopt plans.

Joel's article outlines the areas that many of my fellow municipal planners in Massachusetts want changed, but there is another statute in Massachusetts that must be addressed too. Jon Witten hits the proverbial nail right on the head when he says "No plans + No vision = Exclusionary Zoning?" The problem for municipal planners is this: Providing affordable housing is a good thing, but being forced to approve density bonuses for a paltry number of affordable units on land that is environmentally sensitive and unable to support a grid subdivision is a bad thing, period.

There is something we like to refer to as a "friendly 40B," what I think the law was set up to provide. A "friendly 40B" allows a developer to partner with the community for an affordable housing project on "good land" (not marginal or environmentally sensitive land) that both the community and the developer can feel confident and comfortable with. Too often marginal land that cannot be developed under present rules and regulations is brought before the zoning board of appeal under the threat of a 40B application in an attempt to scare planning boards and abutters into accepting the project and waiving current subdivision rules and regulations to the detriment of the community—allowing for the lessor of two evils. This is not planning. This is not doing the right thing for the community. This is not providing affordable housing. If a comprehensive plan is in place with a housing inventory, housing strategy, affordable housing committee, and an appropriate permitting process, then the "streamlining" that the 40B permitting allows can work. But this is rare and that is why the law needs to be changed. It just doesn't work very well.

The Massachusetts Chapter of the American Planning Association has not taken any official stance on the issues outlined above. But we are poised and ready to move forward with gathering support for zoning reform in Massachusetts and have placed it as a priority agenda item for the coming year.

Tom Broadrick, AICP, is the planning director for the Town of Duxbury, Massachusetts, and President of the Massachusetts Chapter of the American Planning Association

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March 3, 2003

The Honorable Mitt Romney, Governor of the Commonwealth
The Honorable Pamela Resor, Senator, Middlesex and Worcester District
The Honorable James B. Eldridge, Representative in General Court, 37th Middlesex District
Doug Foy, Secretary of Community Development
Jane Wallis Gumble, DHCD
Kathleen O'Donnell, Esq., Kopelman and Paige, Affordable Housing Task Force

Dear Honorable Sirs, Madams and Officials:

As you are well aware, Chapter 40B (in particular Sections 20-23) has been a hot topic of debate among local municipalities, Boxborough included. Recently Boxborough received a letter from the Selectmen of the Town of Norton asking us to lend our voice to the effort to correct inequities and defects in Chapter 40B. The Boxborough Board of Selectmen and other concerned town boards are sympathetic to many of the issues identified by the Town of Norton. Rather than offer a blanket endorsement of their proposals, we prefer to address some topics of highest concern in Boxborough against a framework for constructive change and evolution of Chapter 40B. We believe that a systematic restructuring of the housing and zoning statutes is required – not a piecemeal patching of an unwieldy and outmoded bureaucracy.

Although Chapter 40B's inherent rationale and its mechanics made sense when it was enacted in 1968, current external forces such as explosive population growth and a stumbling economy have rendered Chapter 40B an imperfect solution for the creation of affordable housing in our area. Extremely high housing densities achieved through the comprehensive permit process under Chapter 40B are a huge incentive for profit-taking that is subject to abuse without regard to the original intent to promote and supply affordable housing. In some cases Chapter 40B has become a loophole which some developers are only too happy to exploit in the face of a dwindling supply of suitable subdivision land. A number of towns such as Bedford and Norton have experienced significant comprehensive permit abuses.

Boxborough has been making rapid strides to meet its affordable housing needs. In May 1999, with zero affordable housing units and no strategy, we initiated an intensive study to develop an action plan and recommendations. Since then Boxborough has made significant progress:

- Passed a bylaw establishing an appointed Housing Board with significant powers to develop affordable housing.
- Adopted a Town Meeting approved Affordable Housing Long-Range Plan

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Selina S. Shaw, Assistant Town Administrator
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- Worked with private developers on two comprehensive permit projects. A third proposal is anticipated within weeks. Six affordable units are now occupied and more are under construction.
- Launched a $400K Condominium Exchange program to protect existing residential property with deed restrictions. We conducted the housing lottery for this program on February 20, 2003.

As you can see Boxborough has taken aggressive positive action on affordable housing; we have been recognized for our vigorous efforts. While our long-range plan and strategy recognize the utility of private comprehensive permit projects in serving our local needs, and have been generally positive to date, we are still very concerned about the potential for abuse. Pressures of the 10% affordable housing mandate can coerce towns to accept comprehensive permit developments that overturn local zoning authority granted under GL c40A. Egregious comprehensive permit developments may fly in the face of local wetlands regulations designed to protect drinking water resources for the future. The threat looms for inappropriate developments insensitive to local needs.

Carrot and stick are seriously out of balance with the existing construction of Chapter 40B: all carrot for developers and only the stick for towns. As the General Court and the Affordable Housing Task Force consider the many proposals being put forward to address grievances or injustices under Chapter 40B, it is time for a fresh and balanced approach.

Balance: Protect against runaway infrastructure costs

Towns such as Boxborough are extremely concerned about the effects of large, high-density comprehensive permit developments on the cost of municipal services, especially school costs. Although police, fire, DPW and town government administrative costs scale more or less smoothly with increasing population, school costs can skyrocket suddenly and disastrously. When school age populations exceed thresholds, towns and school committees are forced to undertake large capital programs to enlarge school facilities. We urge the legislature to consider ameliorative remedies to offset sudden increases in school and public service spending tied to mandated affordable housing developments. For example, this could include formulaic increases in the following areas tied to number of certified affordable housing units:

- Chapter 70 school aid
- Lottery distributions
- Chapter 90 roads and infrastructure
- Aid to local police and fire infrastructure, operations or training costs

Balance: Protect public health and safety

It is probably desirable to continue with some incentives for private funds to help develop affordable housing given budget realities at both the state and local levels. However, this must be complemented with better safeguards for local authority to regulate and guide development best suited to local needs and the health and safety of citizens. In Boxborough we want to ensure that we have adequate means to protect our drinking water resources for the future. We do not have a public water supply; our residents depend upon private wells to provide drinking water and private septic systems to deal with wastewater. As there are no streams or rivers running into Boxborough, all our drinking water is ultimately derived from local rainfall. It behooves us to vigilantly protect our watershed and wetlands resources. Several large, unexpected comprehensive permit subdivisions could compromise the availability and quality of water in parts of town.

Under current regulations (i.e. 760 CMR 31.00) there is a rebuttable presumption of need for affordable housing if the 10% mandate has not been met. However, under GL c40A, the state Wetlands Protection Act, and related statutes, towns are given the authority to regulate land development and protect the environment in the interests of the local community. New legislation or regulations are needed to establish a counterbalancing presumption that local zoning, land use and environmental protection measures have been instituted by towns and municipalities in the good faith execution of their duty to protect the public

interests. Adequate means for local control and regulation are available in the case of conventional commercial or residential development. We need stronger local means to ensure protection of groundwater resources from overly dense or inappropriate affordable housing projects developed outside local regulatory authority.

Balance: Recognize and reward what is already working

Comprehensive permit developments under Chapter 40B were intended to provide affordable housing solutions where free market economics had failed. Where the free market is and has been working to produce affordable housing, why do we need to have additional regulatory and statutory requirements imposed? It does not make sense and belies the original intent and premise.

Boxborough is no different than many other communities in Massachusetts in that we do not meet the 10% deed-restricted affordable housing mandate. However, over 35% of Boxborough's housing stock is comprised of condominium units priced between $75,000 and $140,000, which is in the range of certified affordable housing prices set by DHCD for such units. Despite the increase in housing costs throughout the region, these market-rate condominium units have not appreciated above the "affordable" range as determined by DHCD for our economic area. Because they are modest in size relative to new single-family housing, they are likely to remain as economically affordable housing through ordinary market economic forces. If they were considered to be part of our affordable housing stock (i.e., on parity with the DHCD Subsidized Housing Inventory), Boxborough would be well beyond state compliance and some of our environmental concerns for the future would be alleviated. Even so, Boxborough is taking steps to begin protecting some of these units through a deed-restriction process in our Condominium Exchange Program.

DHCD has recently promulgated changes to 760 CMR 30.00 in response to long-standing complaints that certain economically affordable housing categories were not recognized previously as subsidized housing. Under these new changes, several housing styles can now be recognized: for example, group halfway houses and accessory apartments. Similar recognition should be extended to other housing categories where there is sufficient economic justification.

We urge the passage of legislation that would provide fair and equitable recognition of existing free market housing that is effectively providing affordable housing solutions without the necessity of statutory regulation. Give towns the option of managing the risk that prices of free-market units might drift up and out of the affordability range without deed restrictions, but do not penalize them by failing to recognize a market that is currently working. Boxborough's condominiums, the above type units now recognized under 760 CMR 30.00, and similar housing styles across the Commonwealth ought to be recognized and counted toward affordable housing quotas while they meet affordability guidelines.

Balance: Recognize and reward regional housing efforts

Boxborough urges development of new legislation that will enable and recognize regional affordable housing planning and development where multiple towns participate and share in both the cost and rewards of joint projects. A number of factors ought to be considered:

- There is no reason to keep subsidized housing inventory tallies on a town-by-town basis when the problem and its solution are inherently regional in scope and in the possibilities for solutions.
- Higher density affordable housing developments should be linked to regional transportation planning designed to foster more effective access to job markets consistent with affordable housing economics.
- Larger, more cost-effective regional housing solutions could be pursued and locally supported provided a mechanism was devised to share the benefits of participation among several towns.

We note that a regional planning approach to affordable housing has recently been advocated by CHAPA in their ***Smart Growth Demonstration Initiative***, highlighting an idea whose time has come.

Closure

The Boxborough Board of Selectman and other concerned town boards believe that the present GL c40B statute must be amended or revised. Stronger measures should be available to reject inappropriate development projects and retain appropriate local controls in the service of town needs. We need to maintain our ability to protect land and drinking water resources essential for public health. We need reasonable protection from explosive growth in municipal services and school costs that could happen with runaway affordable housing development. Therefore, we respectfully request that in the coming legislative session you substantially revise GL c40B to provide towns with both stronger tools to produce sensible affordable housing tailored to local needs, as well as protection from abusive process and inappropriate developments.

Beyond the issues of protection and amelioration, we need to develop new and workable mechanisms to address housing more broadly and more systematically. We hope to see vigorous legislative support and leadership in the coming months to develop fresh and innovative solutions to the Commonwealth's affordable housing needs.

Sincerely,

David L. Birt,
Chairman, Boxborough Board of Selectmen

Channing Wagg,
Chairman Boxborough Housing Board

Marie Cannon,
Chairman, Boxborough Board of Health

Karen Metheny,
Chairman, Boxborough Planning Board

Charlene Golden,
Chairman Boxborough Conservation Commission

Kathie Becker,
Chairman, Boxborough Zoning Board of Appeals

c.c Jeanne McKnight, Esq., Kopelman & Paige
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Jason Talerman, Esq., Kopelman & Paige
Dick Heaton, Bolton Board of Selectman
Robert W. Kimball, Chairman, Norton Board of Selectmen
Gordon Feltman, Bedford Board of Selectman
Marc Draisen, MAPC Executive Director
Judy Alland, MAPC
Matthew Feher, MMA

Francis A. Puopolo
129 Pond Street
Georgetown, MA 01833

March 21, 2003

Dear Committee,

I am writing to express my opinions relative to 40B.

40B, originally, was well-intended. It was designed to provide State and Federal agencies with a simplified permitting process when building affordable housing. The legislation was constructed to be of benefit to these agencies when working alone, or in partnership with for-profit entities (Limited Dividend Organizations) and non-profit organizations. Read the legislation and this is clear. Today 40B has been so contorted that it doesn't even closely approximate the original legislation; and while well intended 40B is rife with inherent flaws.

Decisions to insure responsible development cannot be made effectively by a single board, particularly a board comprised of members that have little or no experience dealing with most of the issues that larger developments bring. Zoning Boards of Appeals are intended to grant relief from zoning regulations when these regulations cause an undue hardship owing to topography or lot shape. Zoning Boards are not prepared to be the sole determiner of fire safety issues, drainage concerns, wetland concerns, health concerns, police safety concerns, subdivision regulations, etc. Most, if not all, Zoning Boards are unqualified to make decisions on the scale that are required under 40B and this is one of the root causes for the problems that developers face when applying for a comprehensive permit; especially when it is the first time a board has been involved with this legislation.

Another inherent flaw in 40B involves the wide ranging and unfettered authority of the Housing Appeals Committee. This power has reduced local Zoning Board to nothing more than the first stop in the process. Developers regularly appeal because they believe they can gain more (profit) from a decision rendered by HAC. Developers posture during the local hearing process to force an appeal to the HAC. This renders the local proceedings more academic than functional.

Perhaps the most serious flaw in 40B is that the goal of 10% affordable housing is almost impossible to permanently attain because the necessary number of units continuously increases as a result of the development it enables. Every time 100 owned units are constructed under 40B it requires that 10 more affordable units be built. This requires another 40 units just to comply temporarily, then another 16 and so on and so on. Further, when units exceed their period of affordability they are dropped from the affordable census and communities are required to build 4 times as many units to compensate. Then the progression begins again. This is patently unfair, onerous, and needs to be addressed.

Beyond the inherent flaws in the legislation, its original intent has been forgotten. DHCD and HAC have opened the doors for applications from any entity, not just those that 40B was clearly intended to benefit. Starting with Stubborn vs. Barnstable, and the very dubious designation of the New England Fund as a subsidized agency, the intent and integrity of the legislation has continuously deteriorated. What we have today amounts to nothing more than a usurious and onerous law being regularly abused by developers to override local regulations designed to protect the health, safety and environment of the host community.

Implementation and interpretation of 40B is so beneficial to developers that The Home Builders Association of Massachusetts has dedicated its website to informing its members on ways to use 40B, they also hold seminars for their members instructing them to sanctimoniously accuse municipalities of being snobs and discriminatory against affordable housing. All the while this same organization, which holds itself out as being pro-affordable housing, is fighting to stop legislation that would allow municipalities to require inclusion of an affordable component in all subdivisions. For them it is all about increasing, by multiples, the profit potential resulting from the purchase and development of any given piece of land. I have not heard of any project, proposed for private development under 40B, where the net profit of the proposed project is not double or more of what could possibly be achieved using traditional regulations. Why, if these developers are so concerned about affordable housing, do the proposed projects need to be on such a scale that they generate ten times a normally expected profit, if profit is not the motive? Without this usurious characteristic most projects would most probably only meet with very limited resistance.

The root of the aforementioned problem lies in the fact that NEF historically rubber stamped site eligibility letters. The vetting and review by true government agencies originally contemplated in the legislation did not exist in NEF sponsored projects. This was recognized by DHCD and they made changes to hold NEF more accountable during the site eligibility process. NEF's parent FHLB balked at the requirement of any type of real review and responded by suspending the fund. DHCD then responded by taking all responsibility for oversight off NEF's shoulders and turned this function over to affordable housing advocacy organizations that are clearly biased and have no impetus whatsoever to making an unfavorable decision on an application for a site eligibility letter. If the intent was a more stringent review of site eligibility letters, the result is the exact opposite.

The aforementioned changes to 760 CMR Sections 30-31, designed to draw money from The New England Fund back into the process, will only serve to exacerbate the problems that 40B has caused. We now have affordable housing advocacy groups determining the site eligibility and fundability of projects, even though they have no financial stake in the decision. They now also decide whether the final product of the hearing is viable, yet they have no culpability for the result. Now, the only time what historically and questionably has been deemed a qualified subsidizing agency becomes involved is to possibly provide funding for the project after the process is complete. It also means that a project can go though the entire 40B permitting process at the local level with no indication from any organization with the means to fund it that money will be made available.

Anecdotal evidence of how the integrity of the original intent of the law has diminished can be found in the situation we are currently facing in Georgetown. We met our 10% goal and subsequently denied a proposed 40B project. The developer appealed the denial stating that the town needlessly delayed the process even though, during their testimony, his technical staff admits that the plans they refused to change for over a year are defective. This appeal has cost the town over $20,000 and the neighbors about half that amount. This is a perfect example of the attitude of developers and their willingness to appeal anything to HAC. Recently this particular developer has had warrants issued for his arrest because of his failure to appear in Boston Housing Court. This is what the current and very liberal interpretation of 40B has brought to our communities and is the basis for the mistrust and resistance that most developers face.

Finally, a candid and historic review of 40B will show that it has been very ineffective; a finding borne out by recent studies. It is estimated that 30,000 units have been created under 40B over

the last 34 years. That is less than 1,000/yr. Only a portion of these have been affordable and most of the affordable units are part of projects built by State and Federal agencies which would have been constructed with or without 40B. Most of the remaining units were either developed by private entities using federal loans or, more commonly, by private entities using the New England Fund. The term of affordability for these units is normally between 15 and 40 years meaning that they either have, or are due to expire. When the affordable restrictions expire the affordable units are no longer affordable. Where is the benefit to anyone besides the developer?

Further, affordable housing developed under 40B comprises less than 5% of the currently available affordable housing in the State. Given the problems that 40B causes and its inherent defects, isn't there a better way?

I ask your committee to closely and objectively review this legislation. Take away any bias towards the purported "snobs" that the real estate industry would have you believe predominately populate the Commonwealth's communities. When you do you will see that this legislation requires a complete revision, or even repeal, and something newer and more in tune with today's needs should replace it.

Respectfully,

Frank Puopolo
129 Pond Street
Georgetown, MA 01833
978-646-9600

F41

Board of Selectmen
Town Administrator

2198 Main Street
Brewster, Massachusetts 02631-1898
(508) 896-3701
FAX (508) 896-8089

1803 BREWSTER BICENTENNIAL 2003

His Excellency Governor Mitt Romney
Office of the Governor
State House
Room 360
Boston , MA 02133

February 11, 2003

RE: Comprehensive Permit Law (MGL chapter 40B) Reform

Dear Governor Romney;

We are writing to add our voices to those of the Selectmen of Norton and Mansfield to urge review of the State's laws and policies with respect to the provision of affordable housing. While we wish to echo the concern that the current statutory waivers of local control over affordable housing projects proliferates an "anything goes" atmosphere, we do not wish to do away with the ability of local ZBA's to waive certain zoning requirements as a means of encouraging the development of affordable housing.

We can attest to the statement that Comprehensive Permit projects require extraordinary oversight and negotiation on behalf of municipal officials, but we wish to stress that this is because the statute has assumed that the local regulations and controls are too stringent and place the burden of proof on the community to defend it's rules and bylaws. The original intent of 40B was to provide an economic incentive to developers (in the form of higher densities and hence, more units to sell) to off-set the lower prices that would be recouped from the sale of no less than 25% of the units at prices that would be affordable to lower income buyers. The result has been to go too far in the waiver of local controls and to create an adversarial relationship where there should not have been one. The assumption of the Massachusetts Housing Appeals Court is not that the Towns have tried to accommodate the higher density in the best ways they know how, but that the Towns oppose the inclusion of housing for it's lower income residents. This is not necessarily true.

If the State's legislation and programs encouraged greater flexibility and creativity on the part of producing compromises between developers and Towns, we would see better and more integrated affordable housing across the State. Comprehensive Permits encourage developers to produce the largest projects with the highest densities possible. This is exactly the opposite of what Towns seek. Brewster has long favored smaller scale projects of 100% affordable units scattered throughout our Town. The reason we oppose large-scale high-density projects is because of the larger scale and higher concentration of impacts that bigger projects produce. Towns must be assured they can control the scale

Sen O'Leary
Rep George

of affordable housing projects and properly manage the impacts that accompany projects with densities higher than would ordinarily be permitted.

The State should be fostering adaptive re-use of vacant and underutilized properties. While it makes sense to require a percentage of all new growth in all communities to accommodate affordable housing needs, communities can not be expected to accommodate all of their affordable housing in new growth, particularly as growth curtails. Support and promotion must be given to programs that would allow lower income families and individuals to purchase existing housing and renovate real estate that is not being fully utilized. In some cities and towns this may mean re-zoning areas for residential re-development. Banks represent a valuable partner in community investment and their active involvement should be required, with an emphasis on working with local authorities as opposed to catering to the desires of the developer.

While about 25% of Cape Cod's current affordable housing stock was produced via the Comprehensive Permit process, we would contest that is only because no other programs actively and functionally exist. That statistic verifies that about 75% of the housing stock was produced through other programs, which are probably no longer in existence or only marginally funded. One of Cape Cod's greatest affordable housing needs is for municipal workers and for those families who are displaced when property owners opt to collect higher rents from shorter term seasonal leases.

Further, more has to be done to improve the quality of affordable housing stock. Squalor results when properties are allowed to deteriorate below an acceptable living condition. Squalor results when too many occupants are forced to occupy too small a space. Property owners must be provided incentives for re-investment and expansion, when possible. Health regulations must be enforced with realistic expectations of compliance. Enhanced and increased incentives would not only assist property owners and occupants of affordable housing. They would employ trades people who might otherwise be laid off during this economic downturn. Jobs ensure continued spending on services. Fixing the housing problem could soften the impact of an economic downturn in many ways.

In short, we agree that cities and towns would be eased and relieved by a temporary suspension of the application of Mass General Laws, Chapter 40B. However, we would only support such a suspension if the State will commit to work with cities and towns to overhaul affordable housing laws and programs. Small headway has been made, but please do not allow progress on this urgent problem to falter. Affordable housing is a catalytic component to local and State-wide economic recovery. Please consider granting relief from the current dysfunctional legislation and maintain ongoing efforts to reform affordable housing policy as a top recovery priority.

Sincerely,

Brewster Board of Selectmen

Gregory A. Levasseur, Chairman

Peter G. Norton

John C. Mitchell

Robert B. Hirschman

Cc: Norton Board of Selectmen
70 East Main Street, Norton, MA 02766

TOWN OF MARION
2 SPRING STREET
MARION, MASSACHUSETTS 02738-1519

RECEIVED
FEB 07 2003
BOARD OF SELECTMEN

February 5, 2003

The Honorable Mitt Romney
State House, Room #360
Boston, Mass. 02133

Re: Comprehensive Permit Law
Mass. G. L. Chapter 40B

Dear Governor Romney:

The Selectmen of the Town of Marion support and join with our colleagues from the Towns of Mansfield and Norton requesting the immediate suspension of Mass. G. L. Chapter 40B, the Comprehensive Permit Law.

We would request that you consider the **immediate suspension of any project which does not have a current, valid Comprehensive Permit.**

Marion has been, is and will be in the forefront of innovative, creative programs to assist people of all ages and backgrounds to live and work here. We are proud of our success, borne of local efforts in the best spirit of local government providing solutions to local problems.

We echo Mansfield's and Norton's cry for relief from the crushing burdens placed upon cities and towns—all in the name of providing "affordable" housing, but, in fact, providing profit and exploitation for a few developers.

Sincerely,

Marion Board of Selectmen

Benjamin F. Bryant
Chairman

Andrew N. Jeffrey

David K. Pierce

Package Sen Straus rep

Copy to: Selectmen, Towns of Mansfield and Norton

008

03/27/2003 10:11 FAX

TOWN OF NORTH ANDOVER
OFFICE OF
TOWN MANAGER
120 MAIN STREET
NORTH ANDOVER, MASSACHUSETTS 01845

Mark H. Rees
Town Manager

Telephone (978) 688-9510
FAX (978) 688-9556

February 12, 2003

His Excellency Governor Mitt Romney
Office of the Governor
State House
Room 360
Boston, MA 02133

Dear Governor Romney,

On February 10, 2003, the North Andover Board of Selectmen reviewed a letter addressed to you from the Boards of Selectmen of the Towns of Mansfield and Norton requesting that you immediately suspend the provisions of MGL Chapter 40B, the Comprehensive Permit Law. A copy of their letter is attached.

The North Andover Board of Selectmen requested that I communicate to you their full support of this request to suspend MGL Chapter 40B during this time of financial distress. North Andover currently has four 40B proposals in various stages of permitting with several more anticipated in the future. It would be difficult, if not impossible, to provide municipal and school services to additional residents in housing developments at the same time that our financial resources are being reduced.

Thank you for your consideration of this request that would have an immediate impact of reducing financial pressures on municipal budgets.

Sincerely,

Mark H. Rees
Town Manager

Enclosure
MHR/ajj

Cc: North Andover Board of Selectmen
State Senator Steven A. Baddour
State Senator Bruce E. Tarr
State Representative David M. Torrisi
State Representative Barbara A. L'Italien
North Andover Commission on Housing Issues
Mansfield Board of Selectmen
Norton Board of Selectmen

TOWN OF SEEKONK

TOWN ADMINISTRATOR
Timothy P. McInerney

RECEIVED
FEB 06 2003
SELECTMEN

February 4, 2003

Town of Mansfield
Board of Selectmen
Six Park Row
Mansfield, MA 02048

Town of Norton
Board of Selectmen
70 East Main Street
Norton, MA 02766

Dear Board's of Selectmen:

Please be advised at their Meeting of January 29, 2003, the Seekonk Board of Selectmen voted unanimously in favor of supporting Mansfield's and Norton's initiative to suspend Chapter 40B.

At this time, the Town of Seekonk's Board of Selectmen would like to remind you of their Local Option Meals' Tax initiative, and would appreciate it if your esteemed Boards would support this Legislation (attached is a copy for your review).

Best regards,

Timothy P. McInerney

cc: Board of Selectmen

attachment

TPM:cjd

www.ci.seekonk.ma.us
100 Peck Street, Seekonk, Massachusetts 02771
Town Hall (508) 336-7400 — Fax (508) 336-3137

003

03/27/2003 10:11 FAX

I am a consultant in affordable housing and have represented developers on 40B and am working with towns to create affordable housing plans. I was asked by the governor's office to be an active observer to the task force. With regard to some of the issues raised, I have the following suggestions:

1) Concern was raised over lack of information and financial resources at the "Chief Elected Official" level to respond to requests during the site approval process. At this point, the only fees that have been paid are to the entity review the site approval application. This is also a quick look by the municipality only.

An initial and perhaps cost effective approach to this would be for the state to work with the agencies reviewing the site approval applications to draft an information and instruction sheet to the municipalities so that they have a better understanding of what to do with the request, and how to respond.

2) It is my understanding, that for the most part, for the larger scale projects that are limited to one and two bedroom units, the cost of the school age children produced by these projects is offset by the real estate tax and other revenue generated by the projects. This information is easily accessible from fiscal impact analysis that have been provided in connection with these projects. The issue that the committee may want to address, is how to incentivise towns to produce three bedroom units.

From my market research, this is the population that is ending up in motels across the state because there are no units available for the low income husband and wife who have two or more children of opposite sex (i.e., a boy, girl, and parents all need separate bedrooms which makes 3).

Perhaps this is the type of project that the municipality should receive bonus money from the state because they are taking on additional expenses, or perhaps the developer should get a break on the number of affordable units, if they provide three bedroom units. For example, a two for one exchange. For every three bedroom unit, it counts as two affordable units rather than one.

3) It might be helpful for the committee to discuss other options such as LIP and Units only so that all members understand the choices available to developers and towns.

I would be happy to discuss these solutions at your request.

Thank you for considering these ideas.

Lynne

Lynne D. Sweet
LDS Consulting Group, LLC
233 Needham Street
Newton, MA 02464
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617-454-1145 (fax)
www.ldsconsultinggroup.com

Massachusetts Law Reform Institute

99 Chauncy Street, Suite 500, Boston, MA 02111-1703
617-357-0700, 617-357-0777 FAX

MAY 16 2003
18916

Fair Housing Center of Greater Boston

59 Temple Place #1105
Boston, MA 02111
Phone: 617-399-0491
Fax: 617-399-0492
Email: info@bostonfairhousing.com
www.boston.fairhousing.com

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW OF THE BOSTON BAR ASSOCIATION
294 WASHINGTON STREET, SUITE 443
BOSTON, MASSACHUSETTS 02108
TEL (617) 482-1145
FAX (617) 482-4392
Email: office@lawyerscom.org
Web: www.lawyerscom.org

May 15, 2003

Director Jane Wallis Gumble and Task Force Members
40B Task Force, Massachusetts Department of Housing and Community Development
One Congress Street, 10th Floor
Boston, MA 02114

Dear Ms. Gumble and Task Force Members:

We write to encourage the Chapter 40B Task Force to consider the importance of Chapter 40B's anti-exclusionary zoning provisions as a potentially effective way to prevent economic, race, gender, disability and family based discrimination, and conversely, promote integration based on those same factors. As you know, the ability to afford housing in a community is one determinant of who can live there and who will be shut out.

According to the 2000 census, the median family income for Massachusetts is $61,664. Chapter 40B units ensure that affordable housing is available to those making up to 80% of median family income, or $49,331, an income that includes approximately 38% of Massachusetts' 1,587,537 families.[1] In many Commonwealth towns and cities, no

[1] According to the 2000 Census, there are 614,736 Massachusetts families that make up to $49,999 or approximately 38.7 % of the Commonwealth's families. The specific MFI may vary by area of the State.

new housing opportunities are available to such households, and the currently available, affordable housing is slowly disappearing. As a result many Massachusetts households will likely be excluded from these towns and cities based on their income, unless 40B is maintained and in some ways strengthened.

Eliminating or effectively eviscerating Chapter 40B may not only have an economic based, exclusionary effect on many Massachusetts' families, but may also limit fair housing opportunities based on race and ethnicity. People of color and Latinos are likely to have a disproportionate need for 40B housing. According to the 2000 Census, while the median family income of white families in the Commonwealth was $65,327, and non-Hispanic, white families was $66,030, the median family income for African Americans was $38,565; American Indians and Alaskan Natives - $41,322; Asians - $57, 389; Native Hawaiians and other Pacific Islanders - $36, 429; other race alone families - $26, 357; two or more race families - $37, 727; and Hispanic or Latino families - $27, 885.[2] Consequently, cutting back on Chapter 40B may have a pronounced exclusionary, discriminatory effect on people of color in the Commonwealth.

Similarly, the elimination of Chapter 40B may also have a significant exclusionary, discriminatory effect on women and those with disabilities. According to the 2000 Census, while the median earnings of those 16 years of age and over for Massachusetts were $28,420; they were $35,485 for males, and only $22,454 for females. Moreover, while the median family income in Massachusetts was $74,589 for two parent families with children under 18; it was only $34,506 for male-headed, single parent families with children under 18; and even less, $22,138, for female-headed, single parent families with children under 18.

The 2000 Census also showed that 119,743 (or 4%) of Massachusetts 2,444,588 households received Supplemental Security Income. Many of these households include persons who have disabilities.[3] In their study, Priced Out in 2000 (May 2000), the Technical Assistance Collaborative, Inc. and Consortium for Citizens with Disabilities Housing Task Force reported that Massachusetts's average monthly SSI benefit ($626) was only 18.3% of the State's median one-person household income, and determined that the state average percentage of the monthly SSI benefit needed to rent an efficiency apartment was 92%, and to rent a one-bedroom apartment was 106.7%.[4] Eliminating 40B affordable housing opportunities, consequently, would likely disproportionately eliminate housing opportunities for women and persons with disabilities.

Discrimination, which denies housing opportunities based on race, ethnicity, gender, and disability, has led to numerous lawsuits under federal fair housing legislation, and exclusionary zoning by local governments has been successfully challenged under

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[2] The Census categories more specifically are Median Family Income in 1999 (dollars) (white alone householder), (Black or African American alone householder), etc.

[3] According to Social Security Administration statistics, 167,784 persons received SSI in Massachusetts in December 2000; of those 121,825 (or 72.6%) were blind or disabled, and 102,488 (or 61.08%) were 18-64 years of age.

[4] See, Priced Out in 2000 (May 2000) at pp. 11 and 30.

such fair housing laws. See, for example, *Huntington Branch, NAACP v. Town of Huntington,* 844 F.2d 926 (2d Cir. 1988). Increased efforts to remedy exclusionary land use policies may result under fair housing laws and lawsuits in the Commonwealth, if 40B is eliminated.

While additional data would be useful to fully comprehend the extent to which 40B units contribute to the integration of Massachusetts' communities, 40B already appears to have increased housing opportunities. The 31 Massachusetts' communities that have had reached 40B's 10% goal have 127,911 (or approximately 60%) of the Commonwealth's 214,267 40B-units.[5] These communities have a 62.68% non-Hispanic, white total population; an average family income of $57,997.55, and a 40B total of 15.23% of their housing units. In contrast, the 320 communities that have not reached 40B's 10% goal have 86,356 (or approximately 40%) of the Commonwealth's 40B-units. These communities have a 91% non-Hispanic white, total population; an average family income of $86,563.75, and a 40B total of 5.12% of their housing units. See also, additional charts attached. 40B communities, as a whole, then include more people of color, more affordable housing units, and families that on average have lower incomes.

	PERCENT NH WHITE*	% 40B UNITS	Average Family Income
Massachusetts	**81.86%**	**8.48%**	**$78,301.54**
40B Communities	**62.68%**	**15.23%**	**$57,997.55**
Non-40B Communities	**91.00%**	**5.12%**	**$86,563.75**

*Non-Hispanic White

One author suggests that 40B units may have been more effective in promoting economic integration than other forms of integration.[6] This might imply that additional mechanisms are needed to strengthen the integrative effect of 40B housing. For example, additional, affirmative marketing; linking and setting aside of a certain percentage of 40B units for the homeless or for housing voucher holders; incentives for matching and using deeper, additional subsidies; the reinvigorated use of Executive Order 215,[7] and the utilization of regional housing authority voucher waiting lists to rent units may all be appropriate means to strengthen the inclusionary impact of 40B.

[5] The 40B counts and related calculations will need to be slightly adjusted for additional count changes subsequent to 4/24/02 and for official count determinations.
[6] Florence Wagman Roisman, Opening the Suburbs to Racial Integration: Lessons for the 21st Century, 23 W. New. Eng. L. Rev. 65, 75 (2001).
[7] See copy attached.

While there may be additional ways to promote fair housing opportunities, it is clear that the elimination of affordable housing altogether, eliminates potential opportunities to further fair housing. We urge you to oppose efforts to repeal or significantly limit Chapter 40B, and to consider additional approaches to strengthen Chapter 40B's potential to provide inclusionary, fair housing opportunities.

Sincerely,

Allan G. Rodgers
Executive Director
Massachusetts Law Reform Institute

Judith Liben
Attorney
Massachusetts Law Reform Institute

Arthur A. Baer
Attorney
Massachusetts Law Reform Institute

David J. Harris
Executive Director
The Fair Housing Center of Greater Boston

Nadine Cohen
Staff Counsel
Lawyers' Committee For Civil Rights
Under Law of the Boston Bar Association

40B Charts

Statewide

	PERCENT NH WHITE*	Total Pop	NH White Pop	Total Units	40B Units	% 40B UNITS	Aggregate Family Income	Number of Families	Average Family Income
Massachusetts	81.86%	6,349,097	5,197,124	2,527,771	214,267	8.48%	$124,306,691,500	1,587,537	$78,301.54
40B	62.68%	2,050,375	1,285,235	839,686	127,911	15.23%	$26,630,388,100	459,164	$57,997.55
Communities									
Non-40B	91.00%	4,298,722	3,911,889	1,688,085	86,356	5.12%	$97,676,203,400	1,128,373	$86,563.75
Communities									

* Non-Hispanic White Sources: 2000 Census;(40B Inventory (4/24/02);Bonnie Heudorfer, certain updated information through early 2003) **

**40B count and related calculations will need to be slightly adjusted for further additional 40B units after 4/24/02 and official count determinations

Assumes for purposes of this chart that 40B units after 4/24/02 were new construction;

TO: Al Lima, Director of Planning, City of Marlborough

FROM: Kathy Joubert, President, MAPD, Inc.

RE: Chapter 40B Task Force

DATE: May 21, 2003

In response to your request for comments relating to recommended improvements to 40B; how to mitigate the impacts of a 40B development on a community; and how State agencies might better assist the communities in responding to 40B applications, the MAPD Inc. Board of Directors would like to offer the following comments and suggestions to the Task Force:

1. Generally there is an overall lack of correlation between a 40B application and the town's character and style. Typically there isn't any relationship between the proposed structures to the surroundings and the scale and density of the proposed development is usually incompatible with the scale and density of the existing neighborhood. Better communication and some pre-submission consultations with the community would be helpful.
2. We strongly agree with transferring the responsibility of review from the local Zoning Board of Appeals to the Planning Boards. We believe the process would run much smoother for all parties if a board with experience in reviewing large projects were charged with the permitting of 40B proposals. At a bare minimum, municipalities should be allowed the choice of which Board they adopt locally to review the applications and permit the developments.
3. All homeownership units should count towards the 10%. However, you may have noted from the planners list serve that there is not unanimity on this issue.
4. We encourage regionalism as an approach towards reaching an area's 10% goal of affordable housing. Two or more communities should be allowed to work together to solve this on a regional basis, sharing in the infrastructure costs, mitigation packages, taxes and demand on schools. However, communities should not be allowed to "piggyback" on progress already made by an adjacent city or town.
5. There should be a limit imposed on either how many comprehensive permits may be filed within a community at any one time or a limit on the total number of comprehensive permit units under review at any one time. The level of review required by these applications overburdens Town boards and staff in those communities fortunate enough to have professional assistance. Towns without these resources are put in very difficult positions.
6. There needs to be more communication between MassHousing, MHP and the municipality before a site eligibility letter is issued to an applicant. At a minimum, there should be a requirement for the developer to meet with local

and state staff to discuss the needs of the community pertaining to rental or homeownership and the site under consideration. Is this proposal in conformance with the local housing or master plan? Is the site developable? What are the physical site constraints?

7. While many communities are requiring units to remain affordable in perpetuity, minimum guidelines should exist requiring affordability for as long as the development is in non-compliance with the underlying zoning and is enjoying the zoning relief granted under 40B.
8. Overall, we would like to see the Office of Commonwealth Development embrace the Massachusetts Land Use Reform Act and support the principles of smart growth. The continuance of Chapter 40B without regard for local planning efforts encourages sprawl development in Massachusetts. More consideration needs to be given to planning issues in general and specifically, we are encouraged by our inclusion in this process of examining Chapter 40B.

We appreciate being given the opportunity to comment on this very important issue and we look forward to the recommendations of the Task Force.

If you have any questions, please contact me at 508-393-5019.

Cc MAPD Inc.
Board of Directors